Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

11 December 2018 *

(Reference for a preliminary ruling — Economic and monetary policy — Decision (EU) 2015/774 of the European Central Bank — Validity — Secondary markets public sector asset purchase programme — Articles 119 and 127 TFEU — Powers of the ECB and the European System of Central Banks — Maintenance of price stability — Proportionality — Article 123 TFEU — Prohibition of monetary financing of Member States in the euro area)

In Case C-493/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesverfassungsgericht (Federal Constitutional Court, Germany), made by decision of 18 July 2017, received at the Court on 17 August 2017, in the proceedings brought by

Heinrich Weiss and Others,

Bernd Lucke and Others,

Peter Gauweiler,

Johann Heinrich von Stein and Others,

Interested parties:

Bundesregierung,

Bundestag,

Deutsche Bundesbank,

THE COURT (Grand Chamber),

Composed of K. Lenaerts, President, A. Prechal, M. Vilaras, E. Regan, T. von Danwitz, C. Toader and C. Lycourgos, Presidents of Chamber, A. Rosas, E. Juhász, M. Ilešič, L. Bay Larsen (Rapporteur), M. Safjan, D. Šváby, C.G. Fernlund and C. Vajda, Judges,

Advocate General: M. Wathelet,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 10 July 2018,

* Language of the case: German.

after considering the observations submitted on behalf of:

– Mr Weiss and Others, by C. Degenhart,

– Mr Lucke and Others, by H.-D. Horn and G. Beck, Barrister,

– Mr Gauweiler, by D. Murswiek,

– Mr von Stein and Others, by M.C. Kerber, Rechtsanwalt,

– the Deutsche Bundesbank, by A. Guericke, acting as Agent, and by U. Soltész, C. von Köckritz and B. Herz, Rechtsanwälte,

– the German Government, by T. Henze, J. Möller and U. Häde, acting as Agents,

– the Greek Government, by K. Boskovits, S. Charitaki and A. Magrippi, acting as Agents,

– the French Government, by D. Colas, D. Segoin and E. de Moustier, acting as Agents,

– the Italian Government, by G. Palmieri, acting as Agent, and by F. De Luca and P. Gentili, avvocati dello Stato,

– the Portuguese Government, by L. Inez Fernandes, M. Figueiredo, T. Larsen and P. Machado, acting as Agents,

– the Finnish Government, by S. Hartikainen, acting as Agent,

– the European Commission, by L. Flynn, J.-P. Keppenne, C. Ladenburger and B. Martenczuk, acting as Agents,

– the European Central Bank (ECB), by C. Zilioli, K. Kaiser and C. Kroppenstedt, acting as Agents, and by H.-G. Kamann, Rechtsanwalt,

after hearing the Opinion of the Advocate General at the sitting on 4 October 2018,

gives the following

Judgment

1 This request for a preliminary ruling concerns the validity of Decision (EU) 2015/774 of the European Central Bank of 4 March 2015 on a secondary markets public sector asset purchase programme (OJ 2015 L 121, p. 20), as amended by Decision (EU) 2017/100 of the European Central Bank of 11 January 2017 (OJ 2017 L 16, p. 51) ('Decision 2015/774'), and the interpretation of Article 4(2) TEU and Articles 123 and 125 TFEU.

2 The request has been made in the context of four constitutional actions brought by Mr Heinrich Weiss and others, Mr Bernd Lucke and others, Mr Peter Gauweiler and Mr Johann Heinrich von Stein and others, concerning the applicability, in Germany, of various decisions of the European Central Bank (ECB), the participation of the Deutsche Bundesbank (German Central Bank) in the implementation of those decisions or its alleged failure to act with regard to those decisions, and the alleged failure of the Bundesregierung (Federal Government, Germany) and the Deutscher Bundestag (Lower House of the German Federal Parliament), to act in respect of that participation and those decisions.

Legal context

Decision 2015/774

3 Recitals 2 to 4 and 7 of Decision 2015/774 are worded as follows:

‘(2) On 4 September 2014, the Governing Council decided to initiate a third covered bond purchase programme (hereinafter the “CBPP3”) and an asset-backed securities purchase programme (ABSPP). Alongside the targeted longer-term refinancing operations introduced in September 2014, these asset purchase programmes are aimed at further enhancing the transmission of monetary policy, facilitating credit provision to the euro area economy, easing borrowing conditions of households and firms and contributing to returning inflation rates to levels closer to 2%, consistent with the primary objective of the ECB to maintain price stability.

(3) On 22 January 2015, the Governing Council decided that asset purchases should be expanded to include a secondary markets public sector asset purchase programme (hereinafter the “PSPP”). Under the PSPP the [national central banks], in proportions reflecting their respective shares in the ECB’s capital key, and the ECB may purchase outright eligible marketable debt securities from eligible counterparties on the secondary markets. This decision was taken as part of the single monetary policy in view of a number of factors that have materially increased the downside risk to the medium-term outlook on price developments, thus jeopardising the achievement of the ECB’s primary objective of maintaining price stability. These factors include lower than expected monetary stimulus from adopted monetary policy measures, a downward drift in most indicators of actual and expected euro area inflation — both headline measures and measures excluding the impact of volatile components, such as energy and food — towards historical lows, and the increased potential of second-round effects on wage and price-setting stemming from a significant decline in oil prices.

(4) The PSPP is a proportionate measure for mitigating the risks to the outlook on price developments, as it will further ease monetary and financial conditions, including those relevant to the borrowing conditions of euro area non-financial corporations and households, thereby supporting aggregate consumption and investment spending in the euro area and ultimately contributing to a return of inflation rates to levels below but close to 2% over the medium term. In an environment where key ECB interest rates are at their lower bound, and purchase programmes focusing on private sector assets are judged to have provided measurable, but insufficient, scope to address the prevailing downside risks to price stability, it is necessary to add to the Eurosystem’s monetary policy measures the PSPP as an instrument that features a high transmission potential to the real economy. Thanks to its portfolio re-balancing effect, the sizable purchase volume of the PSPP will contribute to achieving the underlying monetary policy objective of inducing financial intermediaries to increase their provision of liquidity to the interbank market and credit to the euro area economy.

…

(7) In terms of the size of the PSPP, the ABSPP and the CBPP3, the liquidity provided to the market by the combined monthly purchases will amount to EUR 60 billion. Purchases are intended to be carried out until the end of September 2016 and will, in any case, be conducted until the Governing Council sees a sustained adjustment in the path of inflation which is consistent with its aim of achieving inflation rates below, but close to, 2% over the medium term.’

4 Article 1 of Decision 2015/774 provides:

‘The Eurosystem hereby establishes the PSPP under which the Eurosystem central banks shall purchase eligible marketable debt securities, as defined in Article 3, on the secondary markets, from eligible counterparties, as defined in Article 7, under specific conditions.’

5 Article 3 of that decision provides:

‘1. Subject to the requirements laid down in Article 3, euro-denominated marketable debt securities issued by central, regional or local governments of a Member State whose currency is the euro, recognised agencies located in the euro area, international organisations located in the euro area and multilateral development banks located in the euro area shall be eligible for purchases by the Eurosystem central banks under the PSPP. In exceptional circumstances, where the envisaged purchase amount cannot be attained, the Governing Council may decide to purchase marketable debt securities issued by other entities located in the euro area …

2. In order to be eligible for purchases under the PSPP, marketable debt securities shall comply with the eligibility criteria for marketable assets for Eurosystem credit operations pursuant to Part Four of Guideline (EU) 2015/510 of the European Central Bank [of 19 December 2014 on the implementation of the Eurosystem monetary policy framework (ECB/2014/60) (OJ 2015 L 91, p. 3)], subject to the following requirements:

(a) the issuer or guarantor of the marketable debt securities shall have a credit quality assessment of at least Credit Quality Step 3 in the Eurosystem’s harmonised rating scale …

…

(d) if the credit assessment … for the issuer, guarantor or issue does not comply with at least Credit Quality Step 3 in the Eurosystem’s harmonised rating scale, marketable debt securities shall be eligible only if they are issued or fully guaranteed by the central governments of euro area Member States under a financial assistance programme and in respect of which the application of the Eurosystem’s credit quality threshold is suspended by the Governing Council …

(e) in the event of a review of an ongoing financial assistance programme, eligibility for PSPP purchases shall be suspended and shall resume only in the event of a positive outcome of the review.

3. In order to be eligible for purchase under the PSPP, debt securities, within the meaning of paragraphs 1 to 2, shall have a minimum remaining maturity of 1 year and a maximum remaining maturity of 30 years at the time of their purchase by the relevant Eurosystem central bank. In order to facilitate smooth implementation, marketable debt instruments with a remaining maturity of 30 years and 364 days shall be eligible under the PSPP. National central banks shall also carry out substitute purchases of marketable debt securities issued by international organisations and multilateral development banks if the envisaged amounts to be purchased in marketable debt securities issued by central, regional or local governments and recognised agencies cannot be attained.

…

5. Purchases of nominal marketable debt instruments at a negative yield to maturity (or yield to worst) equal to or above the deposit facility rate are permitted. Purchases of nominal marketable debt instruments at a negative yield to maturity (or yield to worst) below the deposit facility rate are permitted to the extent necessary.’

6 Article 4(1) of Decision 2015/774 provides:

‘To permit the formation of a market price for eligible securities, no purchases shall be permitted in a newly issued or tapped security and the marketable debt instruments with a remaining maturity that are close in time, before and after, to the maturity of the marketable debt instruments to be issued, over a period to be determined by the Governing Council (“blackout period”). ...’

7 Article 5(1) and (2) of Decision 2015/774 is worded as follows:

‘1. Subject to Article 3, an issue share limit per international securities identification number (ISIN) shall apply under the PSPP to marketable debt securities fulfilling the criteria laid down in Article 3, after consolidating holdings in all of the portfolios of the Eurosystem central banks. The issue share limit shall be as follows:

(a) 50% per ISIN for eligible marketable debt securities issued by eligible international organisations and multilateral development banks;

(b) 33% per ISIN for other eligible marketable debt securities; …

2. All marketable debt securities eligible for purchase under the PSPP and which have the remaining maturities specified in Article 3 shall be subject to an aggregate limit, after consolidating holdings in all of the portfolios of the Eurosystem central banks, of:

(a) 50% of the outstanding securities of an issuer which is an eligible international organisation or a multilateral development bank; or

(b) 33% of the outstanding securities of an issuer other than an eligible international organisation or a multilateral development bank.’

8 Article 6 of that decision provides:

‘1. Of the book value of purchases of marketable debt securities eligible under the PSPP, 10% shall be purchased in securities issued by eligible international organisations and multilateral development banks, and 90% of that book value shall be purchased in securities issued by eligible central, regional or local governments and recognised agencies … This allocation is subject to revision by the Governing Council. Purchases of debt securities issued by eligible international organisations, multilateral development banks and regional and local governments shall be made by NCBs only.

2. The NCBs’ share of the book value of purchases of marketable debt securities eligible under the PSPP shall be 90%, and the remaining 10% shall be purchased by the ECB. The distribution of purchases across jurisdictions shall be in accordance with the key for subscription of the ECB’s capital as referred to in Article 29 of the Statute of the [European System of Central Banks].

3. Eurosystem central banks shall apply a specialisation scheme for the allocation of marketable debt securities to be purchased under the PSPP. The Governing Council shall allow for ad hoc deviations from the specialisation scheme should objective considerations obstruct the achievement of the said scheme or otherwise render deviations advisable in the interests of attaining the overall monetary policy objectives of the PSPP. In particular, each NCB shall purchase eligible securities of issuers of its own jurisdiction. Securities issued by eligible international organisations and multilateral development banks may be purchased by all NCBs. The ECB shall purchase securities issued by central governments and recognised agencies of all jurisdictions.’

9 Article 8 of the decision provides:

'1. The Eurosystem shall publish on a weekly basis the aggregate book value of the securities held under the PSPP in the commentary of its consolidated weekly financial statement.

2. The Eurosystem shall publish on a monthly basis the weighted average residual maturity by issuer residence, separating international organisations and multilateral development banks from other issuers, of its PSPP holdings.

3. The book value of securities held under the PSPP shall be published on the ECB's website under the open market operations section on a weekly basis.'

Decision 2015/2464

10 Recitals 2 to 5 of Decision (EU) 2015/2464 of the European Central Bank of 16 December 2015 amending Decision 2015/774 (OJ 2015 L 344, p. 1) state:

'(2) On 3 December 2015, the Governing Council decided, in line with its mandate to ensure price stability, to revise certain of the PSPP's design features, to secure a sustained adjustment in the path of inflation towards levels that are below, but close to 2%, over the medium term. The revisions are in line with the Governing Council's monetary policy mandate and duly reflect risk management considerations.

(3) Accordingly, in order to achieve the PSPP's objectives, the Governing Council decided to extend the intended horizon of purchases under the PSPP until the end of March 2017, or beyond, if necessary, and in any event until the Governing Council sees a sustained adjustment in the path of inflation that is consistent with its aim of achieving inflation rates below, but close to, 2% over the medium term. The Governing Council decided to extend the intended horizon of the purchases under the CBPP3 and the ABSPP accordingly.

(4) The Governing Council also decided that, in order to enhance the flexibility of the PSPP and thereby support the continued smooth implementation of purchases at least until its intentional end date, euro-denominated marketable debt instruments issued by regional and local governments located in the euro area will be eligible for regular purchases under the PSPP by the national central banks of the jurisdiction in which the issuing entity is located.

(5) The Governing Council also decided to reinvest the principal payments of the securities purchased under the APP [(expanded asset purchase programme)] as the underlying securities mature, for as long as necessary, thus contributing to favourable liquidity conditions and to an appropriate monetary policy stance.'

Decision 2016/702

11 Recitals 2, 3 and 5 of Decision (EU) 2016/702 of the European Central Bank of 18 April 2016 amending Decision 2015/774 (OJ 2016 L 121, p. 24) state:

'(2) In line with the Governing Council's mandate to ensure price stability, certain features of the PSPP should be modified in order to ensure a sustained adjustment in the path of inflation towards levels that are below, but close to 2%, over the medium term. The changes are in line with the Governing Council's monetary policy mandate and duly reflect risk management considerations.

(3) More specifically, in order to achieve the PSPP's objectives, the liquidity provided to the market through the combined monthly purchases under the APP should be increased to EUR 80 billion.

…

(5) Starting in April 2016, the allocation between purchases of eligible marketable debt securities issued by international organisations and multilateral development banks and purchases of other eligible marketable debt securities under the PSPP should be modified in order to achieve the PSPP's objectives and ensure its smooth implementation for the duration of the PSPP and at its increased purchase volume.'

Decision 2017/100

12 Recitals 3 to 6 of Decision 2017/100 are worded as follows:

'(3) On 8 December 2016, the Governing Council decided, in line with its mandate to ensure price stability, that certain parameters of the APP should be adjusted in order to achieve the APP's objectives. The adjustments are in line with the Governing Council's monetary policy mandate, fully comply with the obligations of the Eurosystem central banks under the Treaties and duly reflect risk management considerations.

(4) More specifically, the intended horizon of purchases under the APP should be extended until the end of December 2017, or beyond, if necessary, and in any event until the Governing Council sees a sustained adjustment in the path of inflation that is consistent with its aim of achieving inflation rates below, but close to, 2% over the medium term.

(5) The liquidity provided to the market through the combined monthly purchases under the APP should continue to amount to EUR 80 billion until the end of March 2017. From April 2017, the combined monthly purchases under the APP should proceed at a pace of EUR 60 billion until the end of December 2017, or beyond, if necessary, and in any case until the Governing Council sees a sustained adjustment in the path of inflation consistent with its inflation aim. If, in the meantime, the outlook becomes less favourable, or if financial conditions become inconsistent with further progress towards a sustained adjustment in the path of inflation, the Governing Council intends to increase the programme in terms of size and/or duration.

(6) To ensure the continued smooth implementation of purchases under the APP over the intended horizon, the maturity range of the PSPP should be broadened by decreasing the minimum remaining maturity for eligible securities from two years to one year. Moreover, purchases of securities under the APP with a yield to maturity below the interest rate on the ECB's deposit facility should be permitted to the extent necessary.'

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

13 Several groups of individuals have brought various constitutional actions before the Bundesverfassungsgericht (Federal Constitutional Court, Germany) concerning various decisions of the ECB, the participation of the German Central Bank in the implementation of those decisions or its alleged failure to act with regard to those decisions and the alleged failure of the Federal Government and the Federal Parliament to act in respect of that participation and those decisions.

14 In support of those actions, the applicants in the main proceedings maintain, in essence, that the decisions of the ECB in question together amount to an *ultra vires* act, inasmuch as (i) they fail to observe the division of competences between the European Union and the Member States provided

for in Article 119 TFEU, since they do not fall within the scope of the ECB's mandate, as defined in Article 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 ('the Protocol on the ESCB and the ECB'), and (ii) they infringe Article 123 TFEU. They also argue that those decisions infringe the principle of democracy laid down by the Grundgesetz (German Basic Law) and thereby undermine German constitutional identity.

15 The Bundesverfassungsgericht (Federal Constitutional Court) states that if Decision 2015/774 exceeds the mandate of the ECB or infringes Article 123 TFEU, it must uphold these various actions. The same applies if the rules on the sharing of losses stemming from that decision affect the budgetary powers of the Federal Parliament.

16 In those circumstances, the Bundesverfassungsgericht (Federal Constitutional Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does Decision … 2015/774 … as amended by … Decision … 2016/702 … or the method of its implementation, infringe Article 123(1) TFEU?

Does it infringe Article 123(1) TFEU in particular if in the course of the public sector asset purchase programme (PSPP),

(a) details of the purchases are communicated in a way that creates de facto certainty on the markets that the Eurosystem will purchase part of the bonds to be issued by the Member States?

(b) even after the event no details are given about compliance with minimum periods between the issue of a debt instrument on the primary market and its purchase on the secondary market, with the result that a review by the courts is not possible in that regard?

(c) all bonds purchased are not resold but held until maturity and thus withdrawn from the market?

(d) the Eurosystem purchases marketable debt instruments with a negative yield at maturity?

(2) Does the Decision referred to in [the first question] then infringe Article 123 TFEU in any event if, in view of changes in conditions on the financial markets, in particular as a result of a shortage of bonds available for purchase, its continued implementation requires a continual loosening of the originally agreed purchase rules and [if] the restrictions laid down in the case-law of the Court of Justice for a bond purchase programme, such as the PSPP, lose their effect?

(3) Does the current version of Decision … 2015/774 … infringe Article 119 and Article 127(1) and (2) TFEU and 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 those provisions and for that reason encroaches upon the competence of the Member States?

Is the mandate of the ECB exceeded in particular as a result of the fact that:

(a) on the basis of the volume of the PSPP, which amounted to EUR 1 534.8 billion on 12 May 2017, the Decision referred to in [the first question] materially influences the refinancing terms of the Member States?

(b) in view of the improvement in the refinancing terms of the Member States referred to in (a) above and their effect on the commercial banks, the Decision referred to in [the first question] has not only indirect economic policy consequences but its objectively ascertainable effects suggest that an economic policy aim of the programme is at least of equal priority as the monetary policy aim?

(c) on account of its powerful economic policy effects, the Decision referred to in [the first question] infringes the principle of proportionality?

(d) in the absence of a specific statement of reasons during the period of more than two years of implementation, it is not possible to examine whether the Decision referred to in [the first question] is still necessary and proportionate?

(4) Does the Decision referred to in [the first question] infringe Article 119 and Article 127(1) and (2) TFEU and Articles 17 to 24 of the Protocol on the [ESCB and the ECB] in any event because its volume and implementation period of more than two years and the resulting economic policy effects give grounds for a different view of the need for and proportionality of the PSPP and consequently, from a certain point in time, it exceeds the monetary policy mandate of the [ECB]?

(5) Does the unlimited sharing of risks between the national central banks of the Eurosystem that may be provided for under the Decision referred to in [the first question], in the event of the non-repayment of bonds of the central governments and of equivalent issuers, infringe Article 123 and Article 125 TFEU and Article 4(2) TEU, if as a result it may be necessary for national central banks to be recapitalised using budget funds?'

Consideration of the questions referred

Admissibility of the request for a preliminary ruling

17 The Italian Government submits that the present request for a preliminary ruling must be declared inadmissible in its entirety by the Court.

18 That government argues in that regard, first, that the referring court is in reality asking the Court of Justice to provide an opinion, since the referring court does not accept that the answer that might be given to this request for a preliminary ruling is binding but rather considers that it is itself ultimately responsible for deciding upon the validity of Decision 2015/774 in the light of the conditions and limits laid down by the German Basic Law.

19 However, those arguments do not give grounds for finding the request for a preliminary ruling to be inadmissible given that (i) this request directly concerns the interpretation of EU law and the validity of EU acts and (ii) a judgment in which the Court gives a preliminary ruling is binding on the national court, as regards the interpretation of that law or the validity of such acts, for the purposes of the decision to be given in the main proceedings (see, to that effect, judgment of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraphs 14 and 16).

20 The Italian Government goes on to argue that the national proceedings which have given rise to the present request are not compatible with the system for reviewing the validity of EU acts established by Articles 263 and 267 TFEU. In its view, those proceedings circumvent that system in the sense that they open the way to a direct action against the validity of an EU act before the national courts, when in fact those courts can properly ask the Court of Justice for a preliminary ruling concerning the validity of an EU act only when the origin of the request is to be found in national measures implementing the EU act.

21 In that regard, the Court has consistently held, however, that a request for a preliminary ruling concerning the validity of an EU act is admissible when the referring court is called upon, as is the case in the main proceedings, to hear a genuine dispute in which the question of the validity of an EU act is raised indirectly (see, to that effect, judgment of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 29 and the case-law cited).

22 Lastly, the Italian Government argues that the questions raised are based on complaints that challenge the choices made by the ECB in the exercise of its discretion and in the implementation of Decision 2015/774. It submits that the Court's review cannot concern the implementation of such a decision and is limited, in the sphere of monetary policy, to procedural aspects.

23 It should first be observed in that regard that, in accordance with the principle of conferred powers set out in Article 5(2) TEU, the European System of Central Banks (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 falls 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, under the conditions laid down by the Treaties, subject to review by the Court (judgment of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 41).

24 Next, it is true that the ESCB must be allowed a broad discretion since, when it prepares and implements an open market operations programme, it is required to make choices of a technical nature and to undertake complex forecasts and assessments. The fact remains, however, that the Court is required to ascertain, in its review of the proportionality of the measures entailed by such a programme in relation to monetary policy objectives, whether the ESCB made a manifest error of assessment in that regard (see, to that effect, judgment of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraphs 68, 74, 81 and 91).

25 Finally, the foregoing considerations concern the scope of the examination of the validity of Decision 2015/774 which the Court must undertake. They are not, however, capable of calling into question the Court's obligation to undertake that examination when a question is referred to it for a preliminary ruling on validity and, accordingly, they cannot give grounds for finding the present request for a preliminary ruling to be inadmissible.

26 Consequently, it is not appropriate to declare the request for a preliminary ruling to be inadmissible as a whole.

The first to fourth questions

27 By its first to fourth questions, which it is appropriate to consider together, the referring court is, in essence, asking the Court of Justice to assess the validity of Decision 2015/774 in the light of Article 119, Article 123(1), Article 127(1) and (2) and the second paragraph of Article 296 TFEU and of Articles 17 to 24 of the Protocol on the ESCB and the ECB.

28 As a preliminary point, the Court notes that, in view of the grounds of the order for reference and as the Advocate General has stated in points 31 and 32 of his Opinion, account must be taken, in answering those questions, not only of the ECB decisions mentioned by the referring court but also of Decisions 2015/2464 and 2017/100.

Compliance with the obligation to state reasons laid down in the second paragraph of Article 296 TFEU

29 The referring court is uncertain whether the ECB has complied with the obligation to state reasons arising under the second paragraph of Article 296 TFEU, first, because of the alleged absence of any specific statement of reasons for the ECB decisions relating to the PSPP, in particular so far as the necessity, extent and duration of the economic policy effects of that programme were concerned, and, secondly, because details of the 'blackout period', as referred to in Article 4(1) of Decision 2015/774, were not subsequently published.

30 In that regard, in so far as concerns the alleged absence of a specific statement of reasons for the ECB decisions relating to the PSPP, it should be recalled that, in situations such as that at issue in the present case, in which an EU institution enjoys broad discretion, a review of compliance with certain procedural safeguards –– including 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 –– is of fundamental importance (see, to that effect, judgments of 21 November 1991, *Technische Universität München*, C-269/90, EU:C:1991:438, paragraph 14, and of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraphs 68 and 69).

31 According to settled case-law of the Court, although the statement of reasons for an EU measure, which is required by the second paragraph of Article 296 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 (judgments of 19 November 2013, *Commission* v *Council*, C-63/12, EU:C:2013:752, paragraph 98, and of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 70).

32 In particular, in the case of a measure intended to have general application, which makes clear the essential objective pursued by the institutions, a specific statement of reasons for each of the technical choices made by the institutions cannot be required (see, to that effect, judgments of 10 January 2006, *IATA and ELFAA*, C-344/04, EU:C:2006:10, paragraph 67; of 12 December 2006, *Germany* v *Parliament and Council*, C-380/03, EU:C:2006:772, paragraph 108; and of 7 February 2018, *American Express*, C-304/16, EU:C:2018:66, paragraph 76).

33 The question whether the duty to state reasons has been satisfied must, moreover, be assessed by reference not only to the wording of the measure but also to its context and to the whole body of legal rules governing the matter in question (judgments of 19 November 2013, *Commission* v *Council*, C-63/12, EU:C:2013:752, paragraph 99, and of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 70).

34 In the present case, recitals 3 and 4 of Decision 2015/774 outline the objective of the PSPP, the economic context justifying the establishment of that programme as well as the mechanisms for bringing about the intended effects of the programme.

35 While the statements of reasons for Decisions 2015/2464, 2016/702 and 2017/100 do not reproduce those reasons relating to the PSPP, they do include explanations concerning the considerations underpinning the amendments which those decisions made to the rules governing the PSPP.

36 Furthermore, various documents published by the ECB at the time when each of those decisions was adopted supplement the reasoning given in the decisions by setting out, in detail, the economic analyses underpinning the decisions, the various options considered by the Governing Council and the reasons justifying the choices made, in the light, in particular, of the observed and anticipated effects of the PSPP.

37 Thus, as the Advocate General has observed at points 133 to 138 and 144 to 148 of his Opinion, the successive decisions of the ECB relating to the PSPP have consistently been clarified by the publication of press releases, introductory statements of the President of the ECB at press conferences, accompanied by answers to the questions raised by the press, and by the accounts of the ECB Governing Council's monetary policy meetings, which outline the discussions within that body.

38 In that regard, attention should be drawn in particular to the fact that those accounts include, inter alia, explanations of the upward then downward trends in the monthly volume of purchases of bonds and of the reinvestment of the sums received on maturity of the bonds. They show, in that context, that the potential side effects of the PSPP, including its possible impact on the budgetary decisions of the Member States concerned, were taken into account.

39 The President of the ECB explained at successive press conferences that it was the exceptionally low level of inflation rates, by comparison with the objective of maintaining price stability by returning annual inflation rates to levels closer to 2%, that justified establishing the PSPP and making regular adjustments to that programme. Indeed, prior to the adoption of Decisions 2015/774, 2015/2464, 2016/702 and 2017/100, the annual rate of inflation was, respectively –0.2%, 0.1%, 0.3% and 0.6%. It was only at his press conference on 7 September 2017 that the President of the ECB announced that the annual rate of inflation had reached 1.5%, thus approaching the target.

40 In addition to the various documents mentioned in paragraph 37 of this judgment, which were made available both at the time when the PSPP was set up and whenever that programme was reviewed and amended, mention can also be made of the publication, in the ECB's *Economic Bulletin*, of general analyses of the monetary situation in the euro area and of a number of specific studies dealing with the effects of the APP and the PSPP.

41 It follows from all those factors that the ESCB explained how persistently low levels of inflation and the exhaustion of the instruments normally used for the conduct of its monetary policy led it to consider that the adoption and implementation, with effect from 2015, of an asset purchase programme with the features of the PSPP was necessary, both in principle and in its various practical aspects.

42 Having regard to the principles referred to in paragraphs 31 to 33 of this judgment, those factors establish that the ECB duly stated the reasons for Decision 2015/774.

43 As regards the absence of any subsequent publication of details relating to the black-out period, the Court observes that, since the purpose of such publication would be to show the precise content of the measures adopted by the ESCB rather than the reasons justifying those measures, it cannot be required by virtue of the obligation to state reasons.

44 In view of the foregoing, it must be found that Decision 2015/774 is not vitiated by any defect in the statement of reasons such as to render it invalid.

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

45 The referring court asks whether Decision 2015/774 falls within the ambit of the powers of the ESCB, as defined by primary law, in view, inter alia, of the scale of the effects of the decision, which follow from the volume of bonds that may be acquired under the PSPP and from the duration of that programme.

– *The powers of the ESCB*

46 It should be noted 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 (judgments of 27 November 2012, *Pringle*, C-370/12, EU:C:2012:756, paragraph 48, and of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 34).

47 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 (judgments of 27 November 2012, *Pringle*, C-370/12, EU:C:2012:756, paragraph 50, and of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 35).

48 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. According to Article 282(4) TFEU, the ECB is to adopt such measures as are necessary to carry out its tasks in accordance with Articles 127 to 133 and Article 138 TFEU, as well as with the conditions laid down in the Statute of the ESCB and of the ECB (judgments of 27 November 2012, *Pringle*, C-370/12, EU:C:2012:756, paragraph 49, and of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 36).

49 Within that framework, it is for the ESCB, pursuant to Article 127(2), Article 130 and Article 282(3) TFEU, to define and implement that policy, acting independently and in compliance with the principle of conferral of powers, while it is for the Court, in the exercise of its power of review, to safeguard, under the conditions laid down by the Treaties, the principle of conferral (see, to that effect, judgments of 10 July 2003, *Commission* v *ECB*, C-11/00, EU:C:2003:395, paragraph 134, and of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraphs 37, 40 and 41).

50 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 (judgments of 27 November 2012, *Pringle*, C-370/12, EU:C:2012:756, paragraph 53, and of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 42).

51 Thus, under Article 127(1) and Article 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 (judgments of 27 November 2012, *Pringle*, C-370/12, EU:C:2012:756, paragraph 54, and of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 43).

52 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 within the framework of monetary policy (judgment of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 45).

– Delimitation of the Union's monetary policy

53 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 (judgments of 27 November 2012, *Pringle*, C-370/12, EU:C:2012:756, paragraphs 53 and 55, and of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 46).

54 In the first place, so far as the objectives of Decision 2015/774 are concerned, it is apparent from recital 4 of that decision that the purpose of the latter is to contribute to a return of inflation rates to levels below, but close to, 2% over the medium term.

55 In that regard, it is important to point out that the authors of the Treaties chose to define the primary objective of the Union's monetary policy –– namely the maintenance of price stability –– in a general and abstract manner, but did not spell out precisely how that objective was to be given concrete expression in quantitative terms.

56 It does not appear that the specification of the objective of maintaining price stability as the maintenance of inflation rates at levels below, but close to, 2% over the medium term, which the ESCB chose to adopt in 2003, is vitiated by a manifest error of assessment and goes beyond the framework established by the FEU Treaty. As the ECB has explained, such a choice can properly be based, inter alia, on the fact that instruments for measuring inflation are not precise, on the appreciable differences in inflation within the euro area and on the need to preserve a safety margin to guard against the possible emergence of a risk of deflation.

57 It follows that, as the ECB submits and as the referring court has indeed noted, the specific objective set out in recital 4 of Decision 2015/774 can be attached to the primary objective of the Union's monetary policy, as set out in Article 127(1) and Article 282(2) TFEU.

58 That conclusion is not called into question by the fact, to which the referring court draws attention, that the PSPP allegedly has considerable effects on the balance sheets of commercial banks as well as on the refinancing terms of the Member States of the euro area.

59 In the present case, it is undisputed that, by virtue of its underlying principle and its procedures, the PSPP is capable of having an impact both on the balance sheets of commercial banks and on the financing of the Member States covered by that programme and that such effects might possibly be sought through economic policy measures.

60 It must be emphasised in that regard that Article 127(1) TFEU provides, inter alia, that (i) without prejudice to its primary objective of maintaining price stability, the ESCB is to support the general economic policies in the Union and that (ii) the ESCB must act in accordance with the principles laid down in Article 119 TFEU. Accordingly, within the institutional balance established by the provisions of Title VIII of the FEU Treaty, which includes the independence of the ESCB guaranteed by Article 130 and Article 282(3) TFEU, the authors of the Treaties did not intend to make an absolute separation between economic and monetary policies.

61 In that connection, it should be recalled that a monetary policy measure cannot be treated as equivalent to an economic policy measure for the sole reason that it may have indirect effects that can also be sought in the context of economic policy (see, to that effect, judgments of 27 November 2012, *Pringle*, C-370/12, EU:C:2012:756, paragraph 56, and of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 52).

62 The Court cannot concur with the referring court's view that any effects of an open market operations programme that were knowingly accepted and definitely foreseeable by the ESCB when the programme was set up should not be regarded as 'indirect effects' of the programme.

63 First, both in the judgment of 27 November 2012, *Pringle* (C-370/12, EU:C:2012:756) and in the judgment of 16 June 2015, *Gauweiler and Others* (C-62/14, EU:C:2015:400), the Court regarded as indirect effects, having no consequences for the purposes of classification of the measures at issue in the cases that gave rise to those judgments, effects which, even at the time of adoption of the measures, were foreseeable consequences of those measures, which must therefore have been knowingly accepted at that time.

64 Secondly, 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 (judgment of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 110).

65 More specifically, as the ECB explained before the Court, the transmission of the ESCB's monetary policy measures to price trends takes place via, inter alia, facilitation of the supply of credit to the economy and modification of the behaviour of businesses and individuals with regard to investment, consumption and saving.

66 Consequently, in order to exert an influence on inflation rates, the ESCB necessarily has to adopt measures that have certain effects on the real economy, which might also be sought –– to different ends –– in the context of economic policy. In particular, when the maintenance of price stability requires the ESCB to seek to raise inflation, the measures that it must adopt to ease monetary and financial conditions in the euro area for that purpose may entail an impact on the interest rates of government bonds because, inter alia, those interest rates play a decisive role in the setting of the interest rates applicable to the various economic actors (see, to that effect, judgment of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraphs 78 and 108).

67 That being so, if the ESCB were precluded altogether from adopting such measures when their effects are foreseeable and knowingly accepted, that would, in practice, prevent it from using the means made available to it by the Treaties for the purpose of achieving monetary policy objectives and might –– in particular in the context of an economic crisis entailing a risk of deflation –– represent an insurmountable obstacle to its accomplishing the task assigned to it by primary law.

68 In the second place, as regards the means used in Decision 2015/774 to achieve the objective of maintaining price stability, it is common ground that the PSPP is based on the purchase of government bonds on secondary markets.

69 It is clear from Article 18.1 of the Protocol on the ESCB and the ECB, which forms part of Chapter IV of that protocol, 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 central banks of the Member States may, in principle, operate in the financial markets by buying and selling outright marketable instruments denominated in euros. It follows that the operations provided for by Decision 2015/774 use one of the monetary policy instruments for which primary law provides (see, by analogy, judgment of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 54).

70 In view of the foregoing, it follows that, taking account of its objective and of the means provided for achieving that objective, a decision such as Decision 2015/774 falls within the sphere of monetary policy.

– Proportionality in relation to the objectives of monetary policy

71 It follows from Article 119(2) TFEU and Article 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 (judgment of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 66).

72 According to settled case-law of the Court, the principle of proportionality requires that acts of the EU institutions should be suitable for attaining the legitimate objectives pursued by the legislation at issue and should not go beyond what is necessary to achieve those objectives (judgment of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 67 and the case-law cited).

73 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 provided for in Decision 2015/774, to make choices of a technical nature and to undertake complex forecasts and assessments, it must be allowed, in that context, a broad discretion (judgment of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 68 and the case-law cited).

74 As regards, first, the suitability of the PSPP for attaining the ESCB's objectives, it follows from recital 3 of Decision 2015/774, from the documents published by the ECB at the time of adoption of that decision and from the observations submitted to the Court that Decision 2015/774 was adopted in the light of a number of factors that materially increased the risk of a decline in prices over the medium term, in the context of an economic crisis entailing a risk of deflation.

75 It can be seen from the documents before the Court that, in spite of the monetary policy measures adopted, annual rates of inflation in the euro area were at that time far below the 2% target fixed by the ESCB, as they were no higher than -0.2% in December 2014, and that the forecasts available at that time as to how inflation rates would move anticipated that such rates would remain very low or negative over the following months. Although monetary and financial conditions in the euro area subsequently improved gradually, it is the case that, at the date of adoption of Decision 2015/774, actual annual inflation rates continued to be appreciably below 2%, the rate being 0.6% in November 2016.

76 Against that background, recital 4 of Decision 2015/774 states that, for the purpose of achieving the objective of inflation rates at levels below, but close to, 2%, the PSPP is intended to ease monetary and financial conditions, including those of non-financial corporations and households, thereby supporting aggregate consumption and investment spending in the euro area and ultimately contributing to a return of inflation rates to the levels sought over the medium term.

77 The ECB has referred in this regard to the practices of other central banks and to various studies, which show that large-scale purchases of government bonds can contribute to achieving that objective by means of facilitating access to financing that is conducive to boosting economic activity by giving a clear signal of the ESCB's commitment to achieving the inflation target set, by promoting a reduction in real interest rates and, at the same time, by encouraging commercial banks to provide more credit in order to rebalance their portfolios.

78 Accordingly, in view of the information before the Court, it does not appear that the ESCB's economic analysis –– according to which the PSPP was appropriate, in the monetary and financial conditions of the euro area, for contributing to achieving the objective of maintaining price stability –– is vitiated by a manifest error of assessment.

79 It must therefore be determined, in the second place, whether the PSPP does not go manifestly beyond what is necessary to achieve that objective.

80 In that regard, the PSPP programme was adopted in a context which the ECB described as characterised, on the one hand, by persistently low inflation that risked triggering a cycle of deflation and, on the other, by an inability to counter that risk by means of the other instruments available to the ESCB for increasing inflation rates. Concerning the latter point, it is to be noted, inter alia, that key interest rates were at levels close to the bottom of their conceivable range and that the ESCB had, for several months, already been implementing a programme of large-scale purchases of private sector assets.

81 In those circumstances, in view of the foreseeable effects of the PSPP and given that it does not appear that the ESCB's objective could have been achieved by any other type of monetary policy measure entailing more limited action on the part of the ESCB, it must be held that, in its underlying principle, the PSPP does not manifestly go beyond what is necessary to achieve that objective.

82 As regards the procedures for implementing the PSPP, the way that programme is set up also helps to guarantee that its effects are limited to what is necessary to achieve the objective concerned, in particular because, since the PSPP is not selective, the ESCB's action will have an impact on financial conditions across the whole of the euro area and will not meet the specific financing needs of certain Member States of that area.

83 Likewise, the decision, reflected in Article 3 of Decision 2015/774, to make the purchase of bonds under the PSPP subject to stringent eligibility criteria has the effect of limiting that programme's impact on the balance sheets of commercial banks, by ensuring that the programme is not implemented in such a way as to allow those banks to resell securities with a high level of risk to the ESCB.

84 In addition, the PSPP has, from the start, been intended to apply only during the period necessary for attaining the objective sought and is therefore temporary in nature.

85 It thus follows from recital 7 of Decision 2015/774 that it was initially anticipated that the PSPP's period of application would run until the end of September 2016. That period was subsequently extended until the end of March 2017 and then until the end of December 2017, as is stated in recital 3 of Decision 2015/2464 and recital 4 of Decision 2017/100 respectively. To that end, the decisions taken in that regard were incorporated into Article 2(2) of the Guideline on a secondary markets public sector asset purchase programme (ECB/2015/NP3) ('the Guideline'), which is binding on the central banks of the Member States in accordance with Article 12(1) of the Protocol on the ESCB and the ECB.

86 It does not appear that that initial period or the successive extensions thereof manifestly go beyond what was necessary to achieve the objective sought, since they always covered relatively short periods and were decided upon in view of the fact that the observed changes in inflation rates were not sufficient to achieve the objective sought by Decision 2015/774.

87 As to the volume of bonds that can be purchased under the PSPP, it must first be emphasised that a set of rules has been adopted to limit that volume in advance.

88 Thus, that volume was, from the outset, circumscribed by setting a monthly asset purchase amount under the APP. That amount, which was regularly revised in order to restrict it to what was necessary in order to achieve the stated objective, is found in recital 7 of Decision 2015/774, recital 3 of Decision 2016/702 and recital 5 of Decision 2017/100 and was incorporated in Article 2(2) of the Guideline. It also follows from the last-mentioned provision that priority is given to bonds issued by private operators for the purpose of reaching the monthly asset purchase volume under the APP as a whole.

89 In addition, the extent of the ESCB's possible intervention on secondary markets, within the framework of the PSPP, is also restricted by the rules in Article 5 of Decision 2015/774, which lay down strict purchase limits per issue and per issuer.

90 Next, although it is true that, despite those various limits, the total volume of securities that may be acquired under the PSPP remains substantial, the ECB has made the valid point that the efficacy of such a programme through the mechanisms described in paragraph 77 of this judgment depends on a large volume of government bonds being purchased and held. That means not only that the volume of purchases must be sufficient, but also that it may prove necessary — in order to achieve the objective pursued by Decision 2015/774 –– to hold the bonds purchased on a lasting basis and to reinvest the sums realised when those bonds are repaid on maturity.

91 In that regard, the fact that that reasoned analysis is disputed does not, in itself, suffice to establish a manifest error of assessment on the part of the ESCB, 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 (see, to that effect, judgment of 16 June 2005, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 75).

92 Finally, having regard to the information in the documents before the Court and to the broad discretion enjoyed by the ESCB, it is not apparent that a government-bonds purchase programme of either more limited volume or shorter duration would have been able to bring about –– as effectively and rapidly as the PSPP –– changes in inflation comparable to those sought by the ESCB, for the purpose of achieving the primary objective of monetary policy laid down by the authors of the Treaties.

93 In the third place, as the Advocate General has stated in point 148 of his Opinion, the ESCB weighed up the various interests involved so as effectively to prevent disadvantages which are manifestly disproportionate to the PSPP's objective from arising on implementation of the programme.

94 In particular, as the Court has already had occasion to note, in paragraph 125 of the judgment of 16 June 2015, *Gauweiler and Others* (C-62/14, EU:C:2015:400), the open market operations authorised by the authors of the Treaties inevitably entail a risk of losses. However, the ESCB has adopted various measures designed to circumscribe that risk and to take it into account.

95 Thus, the rules mentioned in paragraphs 83 and 89 of this judgment also reduce that risk, by limiting the ESCB's exposure in the event of a default of the issuer of some of the bonds purchased and by ensuring that bonds with a significant default risk cannot be purchased under the PSPP. It follows, moreover, from Article 4(3) of the Guideline that the ECB monitors the central banks of the Member States on an ongoing basis to ensure that they are complying with those rules.

96 In addition, in order to prevent the position of a central bank of one Member State from being weakened in the event of an issuer in another Member State failing to make a repayment, Article 6(3) of Decision 2015/774 provides that each national central bank is to purchase eligible securities of issuers of its own jurisdiction.

97 If, despite those preventive measures, the purchase of securities under the PSPP were to result in, possibly significant, losses, the information provided to the Court indicates that the rules on loss allocation, which were established right at the start of the programme and have subsequently been maintained, provide that, in the case of any losses of a national central bank that are related to the programme, the only losses to be shared are those generated by securities issued by eligible international organisations; under Article 6(1) of Decision 2015/774, such securities represent 10% of the total value of the PSPP. By contrast, the ESCB has not adopted any rule allowing for the sharing of losses of a central bank of a Member State that derive from securities issued by issuers of that Member State. Nor has the adoption of such a rule been announced by the ESCB.

98 It follows from the foregoing that the ESCB duly took into consideration the risks to which the substantial volume of asset purchases under the PSPP might possibly expose the central banks of the Member States and that, having considered the interests involved, it took the view that it was not appropriate to establish a general rule on loss sharing.

99 As regards possible PSPP-related losses of the ECB, especially in the event of its purchasing, within the limit of the 10% share allocated to it by Article 6(2) of Decision 2015/774, exclusively or predominantly securities issued by national authorities, it must be observed that the ESCB has not adopted –– beyond the safeguards against such a risk that are afforded both by the high eligibility criteria set out in Article 3 of that decision and by the purchase limits per issue and per issuer under Article 5 of the decision –– any rule derogating from the general scheme for the allocation of losses of the ECB under Article 32(5) of the Protocol on the ESCB and the ECB in conjunction with Article 33 thereof. It follows, in essence, that such losses may be offset against the ECB's general reserve fund and, if

necessary, following a decision by the Governing Council, against the monetary income of the relevant financial year in proportion and up to the amounts allocated to the national central banks in accordance with the rule that allocation is in proportion to their respective paid-up shares in the capital of the ECB.

100 It follows from those considerations that Decision 2015/774 does not infringe the principle of proportionality.

Article 123(1) TFEU

101 The referring court is uncertain whether Decision 2015/774 is compatible with Article 123(1) TFEU.

102 According to the wording of Article 123(1) TFEU, that provision 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.

103 It follows that that provision prohibits all financial assistance from the ESCB to a Member State, but does not preclude, generally, the possibility of the ESCB purchasing from the creditors of such a State, bonds previously issued by that State (judgments of 27 November 2012, *Pringle*, C-370/12, EU:C:2012:756, paragraph 132, and of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 95).

104 As regards Decision 2015/774, it should be observed that under the PSPP the ESCB is not entitled to purchase bonds directly from public authorities and bodies of the Member States, but only to do so indirectly, on the secondary markets. The intervention by the ESCB provided for by that programme thus cannot be equated with a measure granting financial assistance to a Member State.

105 However, the Court has held that Article 123(1) TFEU imposes two further limits on the ESCB when it adopts a programme for purchasing bonds issued by the public authorities and bodies of the Union and the Member States.

106 First, the ESCB cannot validly purchase bonds on the secondary markets under conditions which would, in practice, mean that its intervention has an effect equivalent to that of a direct purchase of bonds from the public authorities and bodies of the Member States (see, to that effect, judgment of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 97).

107 Secondly, the ESCB must build sufficient safeguards into its intervention to ensure that the latter does not fall foul of the prohibition of monetary financing in Article 123 TFEU, by satisfying itself that the programme is not such as to reduce the impetus which that provision is intended to give the Member States to follow a sound budgetary policy (see, to that effect, judgment of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraphs 100 to 102 and 109).

108 The safeguards which the ESCB must provide so that those two restrictions are observed will depend both on the particular features of the programme under consideration and on the economic context in which that programme is adopted and implemented. Whether those safeguards are sufficient must then be determined by the Court in the event of the programme being challenged.

– The alleged equivalence of intervention under the PSPP and the purchase of bonds on the primary markets

109 The referring court considers that the PSPP procedures may create, for private operators, de facto certainty that the bonds that they may acquire from the Member States will subsequently be purchased by the ESCB on the secondary markets.

110 In that regard, it should be observed that the ESCB's intervention would be incompatible with Article 123(1) TFEU if the potential purchasers of government bonds on the primary markets 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 public authorities and bodies of the Member State concerned (judgment of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 104).

111 In the present case, it is true that the foreseeability of the ESCB's intervention under the PSPP is –– deliberately –– increased by publishing in advance a set of features of that programme, which, as the Commission and the ECB have emphasised, is intended to contribute to the effectiveness and proportionality of the programme, by limiting the volume of bonds that actually have to be purchased to achieve the objective sought.

112 In particular, the announcement, both in decisions of the ESCB and in communications intended for the public, of the monthly volume of asset purchases envisaged under the APP, the expected duration of that programme, the rules for allocating those volumes between the various central banks of the Member States, or the eligibility criteria governing the purchase of a security, is such as to enable private operators to foresee, to some extent, significant aspects of the ESCB's future actions on the secondary markets.

113 However, the ESCB has put in place various safeguards with a view to ensuring that a private operator is not able to act as if it were an intermediary of the ESCB.

114 Thus, observance of the blackout period provided for in Article 4(1) of Decision 2015/774, which is monitored by the ECB pursuant to Article 9 of the Guideline, ensures that bonds issued by a Member State cannot be purchased by the ESCB immediately after they are issued.

115 Although Article 4(1) of Decision 2015/774 does not specify the precise duration of the blackout period, which is fixed in Article 15 of the Guideline, the ECB has stated, in its written observations, that the length of the period is measured in days rather than weeks. Such a duration does not, however, give operators who are potential purchasers of government bonds on the primary markets the certainty that the ESCB is going to purchase those bonds very shortly thereafter.

116 Indeed, the absence of any publication, either in advance or after the event, of information concerning the duration of the blackout period, and the fact that the period in question is only a minimum period, on expiry of which the purchase of a security is permitted, avoid a situation in which a private operator is able to act, de facto, as an intermediary of the ESCB, since those factors limit the foreseeability, in terms of timing, of the ESCB's interventions on the secondary markets. The fact that a purchase may thus take place several months or several years after a bond has been issued increases the uncertainty of private operators all the more, given that the ESCB has the option of reducing the monthly volume of bond purchases under the APP and has, moreover, already made use of that option on a number of occasions.

117 In addition, the ESCB has introduced a number of safeguards specifically to prevent private operators from predicting with certainty whether particular bonds will in fact be purchased on the secondary markets under the PSPP.

118 First, although the ESCB discloses the total volume of projected purchases under the APP, it does not disclose the volume of bonds issued by public authorities and bodies of a Member State which will in the normal course of events be purchased in a given month under the PSPP. In addition, the ESCB has laid down rules intended to ensure that that volume cannot be precisely determined in advance.

119 In that regard, first, the rules laid down in Article 2(2) of the Guideline provide that the volume set out therein applies for the whole of the APP and that PSPP purchases may be made only up to the residual amount. It follows that the volume of those purchases having to be made can vary from month to month depending on how many bonds issued by private operators are available on the secondary markets. That provision also enables the Governing Council to depart, by way of exception, from the monthly forecast volume, when specific market conditions so demand.

120 Secondly, although Article 6(2) of Decision 2015/774 provides that purchases are to be distributed among the central banks of the Member States in accordance with the key for subscription of the ECB's capital, it cannot be deduced with certainty therefrom that the amount thus allocated to a central bank of a Member State will be used, to the extent provided for in Article 6(1) of that decision, for the purchase of bonds originating from public authorities and bodies of that Member State. Indeed, the allocation of securities purchased under the PSPP, as provided for in Article 6(1) of Decision 2015/774, is, under the second sentence of that provision, to be subject to revision by the Governing Council. Decision 2015/774 also includes various mechanisms that inject a degree of flexibility into purchases under the PSPP, in particular by permitting, in Article 3(3) and (4), substitute purchases to be carried out and, in Article 6(3), the Governing Council to allow ad hoc deviations from the specialisation scheme for the allocation of securities purchased under the PSPP. Article 2(3) of the Guideline enables the Eurosystem central banks to depart from the monthly purchase guidance in order to react appropriately to market conditions.

121 Next, it is apparent from Article 3(1), (3) and (5) of Decision 2015/774 that the ESCB has authorised the purchase of diversified securities under the PSPP, thereby reducing the possibilities for determining in advance the nature of the purchases that will be made for the purpose of achieving the programme's monthly purchase targets.

122 Thus, it is possible in that context for not only bonds issued by central governments but also those issued by regional or local governments to be purchased. Similarly, those bonds can have a maturity of between 1 year and 30 years and 364 days and their yield may, where necessary, be negative, or even below the deposit facility rate.

123 It must also be noted that Decisions 2015/2464 and 2017/100 rightly amended, on these points, the scheme initially set up in order to extend the scope of asset purchases. Those decisions thus further limited, in the light of the changes in market conditions, the foreseeability of the ESCB's purchases of Member State bonds.

124 Lastly, under Article 5(1) and (2) of Decision 2015/774, the Eurosystem central banks cannot purchase more than 33% of a particular issue of bonds of a central government of a Member State or more than 33% of the outstanding securities of one of those governments.

125 It follows from those purchase limits, compliance with which is monitored on a daily basis by the ECB in accordance with Article 4(3) of the Guideline, that the ESCB is not permitted to buy either all the bonds issued by such an issuer or the entirety of a given issue of those bonds. As has been pointed out by the governments that have taken part in the present proceedings and by the ECB, it follows that, when bonds are purchased from a central government of a Member State, a private operator necessarily runs the risk of not being able to resell them to the ESCB on the secondary markets, as a purchase of all the bonds issued is in all cases precluded.

126 The uncertainty that those purchase limits create in that regard is heightened by the restrictions which Article 8 of Decision 2015/774 places on the publication of information concerning the bonds held by the ESCB. As a result of those restrictions, only aggregate information is published, to the exclusion of any indication as to the proportion of bonds actually held by the ESCB following a given issue.

127 It follows from all the foregoing that, assuming that, as mentioned by the referring court, the ESCB is faced with a severe shortage of bonds issued by certain Member States –– which has been strongly disputed by the ECB ––, the safeguards built into the PSPP ensure that a private operator cannot be certain, when it purchases bonds issued by a Member State, that those bonds will actually be bought by the ESCB in the foreseeable future.

128 Accordingly, it must be found, as the Advocate General has stated in point 79 of his Opinion, that the fact that the PSPP procedures make it possible to foresee, at the macroeconomic level, that there will be a purchase of a significant volume of bonds issued by public authorities and bodies of the Member States does not afford a given private operator such certainty that he can act, de facto, as an intermediary of the ESCB for the direct purchase of bonds from a Member State.

– Allegedly reduced impetus to conduct a sound budgetary policy

129 The referring court asks whether Decision 2015/774 is compatible with Article 123(1) TFEU inasmuch as the certainty that that decision might create with regard to the ESCB's intervention may distort market conditions by reducing the impetus for Member States to pursue a sound budgetary policy.

130 It should be borne in mind that the fact that implementation of an open market operations programme to some extent facilitates financing for the Member States concerned is not decisive, since 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 (see, to that effect, judgment of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraphs 108 and 110).

131 Accordingly, although such a programme may make it foreseeable that, in the months ahead, a not inconsiderable proportion of the bonds issued by a Member State is likely to be purchased by the ESCB, which can facilitate that Member State's financing, that does not in itself mean that the programme is incompatible with Article 123(1) TFEU.

132 However, in order to avoid a situation in which the Member States' impetus to pursue a sound budgetary policy is reduced, the adoption and implementation of such a programme may not create certainty regarding a future purchase of Member State bonds, in consequence of which Member States might adopt a budgetary policy that 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 in consequence of which they would be protected against the consequences which a change in their macroeconomic or budgetary situation may have in that regard (see, to that effect, judgment of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraphs 113 and 114).

133 In that context, it must be stated, in the first place, that, according to recital 7 of Decision 2015/774, the PSPP is intended to be implemented only until the Governing Council sees a sustained adjustment in the path of inflation which is consistent with its aim of achieving inflation rates below, but close to, 2% over the medium term. Although the actual period of anticipated application of the PSPP has nonetheless been extended on a number of occasions, that principle has never been called into question when it was decided to adopt those extensions, as is confirmed by recital 3 of Decision 2015/2464 and recital 5 of Decision 2017/100.

134 It follows that the ESCB has, in its successive decisions, provided for the purchase of government bonds only in so far as necessary for the maintenance of price stability, that it has regularly revised the PSPP volume and that it has consistently preserved the temporary nature of that programme.

135 The programme's temporary nature is also reinforced by the fact that, under Article 12(2) of the Guideline, the ESCB has retained the option of selling purchased bonds at any time, which enables it to adapt its programme according to the attitudes of the Member States concerned and means that the operators involved cannot be certain that the ESCB will not make use of that option (see, by analogy, judgment of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraphs 117 and 118).

136 Accordingly, Decision 2015/774 does not enable the Member States to determine their budgetary policy without taking account of the fact that, in the medium term, continuity in the implementation of the PSPP is in no way guaranteed and that they will thus be compelled, in the event of a deficit, to seek financing on the markets without being able to take advantage of the easing of financing conditions that implementation of the PSPP may entail (see, by analogy, judgment of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraphs 112 and 114).

137 In the second place, it is important to note that Decision 2015/774 and the Guideline contain a series of safeguards designed to limit the effects of the PSPP on the impetus to pursue a sound budgetary policy.

138 First, the scale of the PSPP's impact on the financing conditions of the Member States of the euro area is limited by the measures restricting the volume of Member State bonds eligible to be purchased under the PSPP (see, by analogy, judgment of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 116).

139 In that regard, it can be seen from the considerations in paragraph 88 of this judgment that the total volume of those bonds is limited, *de jure*, both by the setting of a monthly purchase amount under the APP and by the subsidiary nature of the PSPP within the APP, as described in Article 2(2) of the Guideline.

140 In addition, as the ECB has argued, the distribution, in accordance with Article 6(2) of Decision 2015/774, of those purchases between national central banks in accordance with the key for subscription of the ECB's capital, as referred to in Article 29 of the Protocol on the ESCB and the ECB, rather than in accordance with other criteria such as, for example, the level of the respective debts of each Member State, in conjunction with the rule set out in Article 6(3) of that decision that each national central bank is to purchase securities of public issuers of its own Member State, means that the considerable increase in a Member State's deficit resulting from the possible abandonment of a sound budgetary policy would reduce the proportion of that Member State's bonds purchased by the ESCB. Implementation of the PSPP does not therefore enable a Member State to avoid the consequences, so far as financing is concerned, of any deterioration in its budgetary position.

141 Moreover, as a result of the purchase limits per issue and per issuer set out in Article 5(1) and (2) of that decision, in every case only a minority of the bonds issued by a Member State can be purchased by the ESCB under the PSPP, which means that that Member State has to rely chiefly on the markets to finance its budget deficit.

142 Next, Article 3(2) of Decision 2015/774 lays down stringent eligibility criteria based on a credit quality assessment, from which it is possible to depart only if the Member State concerned is subject to a financial assistance programme. Article 13(1) of the Guideline provides in addition that, in the event of a downgrade of the rating of a Member State's bonds or of a negative review of a financial assistance programme, the Governing Council will have to decide whether to sell the bonds of the Member State concerned that have already been purchased.

143 It follows, as the Advocate General has stated in point 87 of his Opinion, that a Member State cannot rely on the financing possibilities to which the implementation of the PSPP may give rise in order to abandon a sound budgetary policy, without ultimately running the risk (i) of the bonds that it issues being excluded from the PSPP because they have been downgraded or (ii) of the ESCB selling the bonds of that Member State which it had previously purchased.

144 Accordingly, Decision 2015/774 does not reduce the impetus of the Member States concerned to conduct a sound budgetary policy.

– Holding bonds until maturity and purchasing bonds at a negative yield to maturity

145 The referring court expresses its doubts as to the compatibility of Decision 2015/774 with Article 123(1) TFEU with regard to (i) the possibility of the ESCB holding bonds purchased until maturity and (ii) the purchase of bonds at a negative yield.

146 As regards, in the first place, the possibility of the ESCB holding bonds purchased under the PSPP until maturity, it must be recalled 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 (judgment of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 118).

147 The ESCB is thus entitled to evaluate, on the basis of the objectives and characteristics of an open market operations programme, whether it is appropriate to envisage holding the bonds purchased under that programme; selling the bonds is not to be regarded as the rule and holding them as the exception to that rule.

148 In the present case, although Decision 2015/774 does not provide any further details concerning the possible sale of bonds purchased under the PSPP, it is clear from Article 12(2) of the Guideline that the ESCB retains the option of selling such bonds at any time and without any specific conditions.

149 Furthermore, the absence of any obligation to sell the bonds purchased is not sufficient to establish an infringement of Article 123(1) TFEU.

150 First, the mere fact that the ESCB has the option of selling, should it so wish, all or part of the purchased bonds helps to maintain the impetus to conduct a sound budgetary policy, since –– as has been stated in paragraph 135 of this judgment –– that option allows the ESCB to adapt its programme according to the attitudes of the Member States concerned.

151 Secondly, should the ESCB continue to hold those bonds, that does not, in itself, mean that that impetus of the Member States concerned is diminished, particularly because, as the ECB has pointed out, such retention of the bonds is not accompanied by any obligation for the ESCB to purchase the new bonds which a Member State that ceased to follow a sound budgetary policy would inevitably have to issue.

152 Although such holding of bonds is nonetheless liable to have some influence on the functioning of the primary and secondary sovereign debt markets, that effect is inherent in purchases on the secondary markets which are authorised by primary law. That effect is, moreover, essential if those purchases are to be used effectively in the framework of monetary policy (see, to that effect, judgment of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 108) and are thereby to contribute to the objective of maintaining price stability, mentioned in paragraph 51 of this judgment.

153 As regards, in the second place, the purchase of government bonds at a negative yield to maturity, the first point to make is that Article 18.1 of the Protocol on the ESCB and the ECB authorises open market operations and does not provide that such operations must concern bonds with a minimum yield.

154 Secondly, Article 123(1) TFEU is not to be interpreted as preventing the ESCB from purchasing such bonds within the framework of the PSPP.

155 Although the issue of bonds at a negative yield to maturity is advantageous in financial terms for the Member States concerned, those bonds can be purchased, under the PSPP, only on the secondary markets and they do not therefore give rise to the grant of overdraft facilities or any other type of credit facility in favour of public authorities and bodies of the Member States, or to the direct purchase from them of their debt instruments.

156 As to the question whether the purchase by the ESCB of government bonds at a negative yield to maturity has an effect equivalent to that of a direct purchase of bonds from the public authorities and bodies of the Member States, it should be pointed out that, in the economic context in which Decision 2015/774 was adopted, authorising the purchase of bonds at a negative yield to maturity does not make it easier for private operators to identify the bonds that the ESCB will buy. It is more likely to reduce the certainty of operators on that point by broadening the range of bonds eligible for purchase under the PSPP. The easing of the yield criteria which Decision 2017/100 effects is, moreover, likely further to reinforce the safeguards adopted by the ESCB in that regard.

157 In addition, as the ECB has stated, since bonds with a negative yield can be issued only by Member States whose financial situation is assessed positively by operators in the sovereign debt markets, the purchase of such bonds cannot be considered to reduce the impetus of the Member States to follow a sound budgetary policy.

158 In view of all the foregoing, the answer to the first to fourth questions is that consideration of those questions has disclosed no factor of such a kind as to affect the validity of Decision 2015/774.

The fifth question

159 By its fifth question, the referring court asks, in essence, whether it is compatible with Article 4(2) TEU and Articles 123 and 125 TFEU for a decision of the ECB to provide for the entirety of the losses that might be sustained by one of the central banks following a potential default by a Member State to be shared between the central banks of the Member States, in a context in which the scale of those losses would make it necessary to recapitalise that central bank.

160 The Italian Government maintains that this question is inadmissible as it is clearly hypothetical.

161 Without formally submitting that the fifth question is inadmissible, the Greek, French, Portuguese and Finnish Governments, as well as the Commission and the ECB, observe that it is hypothetical in nature or, at least, that it is concerned with uncertain changes in EU law. The Portuguese Government and the Commission also emphasise that it would be inappropriate for the Court to rule on such changes when they amount to no more than a mere possibility.

162 In that regard, it should be noted that primary law includes no rules providing for the losses sustained by one of the central banks of the Member States in the course of open market operations to be shared between those central banks.

163 Moreover, it is undisputed that the ECB decided not to adopt a decision entailing sharing of the entirety of losses made by the central banks of the Member States during implementation of the PSPP. As the referring court points out, the ECB has, up until now, provided, so far as such losses are concerned, only for the sharing of losses generated by securities issued by international issuers.

164 It follows, first, that the potential volume of those losses is circumscribed by the rule, set out in Article 6(1) of Decision 2015/774, limiting the proportion of those securities to 10% of the book value of purchases under the PSPP and, secondly, that the losses that may be shared, should the case arise, between the central banks of the Member States cannot be the direct consequence of the default of a Member State, to which the referring court alludes.

165 In that regard, the Court has consistently held that, although questions concerning EU law enjoy a presumption of relevance, it must refuse to give a ruling on a question referred by a national court 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 of 10 July 2018, *Jehovan todistajat*, C-25/17, EU:C:2018:551, paragraph 31 and the case-law cited).

166 Accordingly, the Court cannot, if it is not to exceed its powers, reply to the fifth question by delivering an advisory opinion on a problem which is, at this stage, hypothetical (see, to that effect, judgments of 10 November 2016, *Private Equity Insurance Group*, C-156/15, EU:C:2016:851, paragraph 56, and of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 194).

167 Consequently, the fifth question must be found to be inadmissible.

Costs

168 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:

1. **Consideration of the first to fourth questions referred for a preliminary ruling has disclosed no factor of such a kind as to affect the validity of Decision (EU) 2015/774 of the European Central Bank of 4 March 2015 on a secondary markets public sector asset purchase programme, as amended by Decision (EU) 2017/100 of the European Central Bank of 11 January 2017.**

2. **The fifth question is inadmissible.**

[Signatures]