

Euro Area

German Constitutional Court Leaves OMT in Limbo

- **German Constitutional Court (GCC) takes dim view of OMT, refers case to ECJ.** The GCC said that it saw 'important reasons' to assume that the OMT exceeds the ECB's mandate and violates the Treaty's monetary financing prohibition and was therefore inclined to see the OMT as '*ultra vires*' (beyond the ECB's powers). It noted that a restrictive interpretation of the OMT could still make it conform to (European) law and referred the OMT to the European Court of Justice (ECJ). The GCC announced that it will issue a ruling on other aspects of the case (including the ESM and Fiscal Compact) on March 18.

- **The ruling is a surprise, in our view, for two reasons.** First, the GCC has to our knowledge never referred a case to the ECJ, but has tended to guard its own role in ruling on European matters. Second, as we have discussed previously, we had expected the GCC to rule that the OMT would be in principle in line with European (and German) law. The press release highlights that the Court thinks three key aspects of the OMT are probably in violation of the ECB's mandate: i) the ECB's *pari passu* status, ii) its potential 'unlimitedness', and iii) its focus on affecting market prices. In the GCC's view, these issues would need to be addressed for the OMT to be consistent with the ECB's mandate. The GCC rejected the ECB's justification for the OMT as a monetary policy tool: '*the fact that the purchase of government bonds can, under certain conditions, also help to support the monetary policy objectives of the European System of Central Banks does not turn the OMT Decision itself into an act of monetary policy.*' The Court also highlighted that should the ECB act '*ultra vires*', it creates '*an obligation of German authorities to refrain from implementing it and a duty to challenge it*'.

A clear negative, in our view. The GCC cannot legally bind the ECB and it has referred the case to the ECJ. Historically, the ECJ has tended to a more pro-European interpretation of the law, which makes it likely, in our view, that it will declare the OMT to be in line with European law. But the GCC's ruling probably raises the hurdles for the OMT to be activated, certainly before the ECJ issues its ruling (which will likely take months or even years) and plausibly even thereafter. This is because a positive ruling by the ECJ that does not address the GCC's reservations would create a very public disagreement between the two Courts. While the ECB is likely to put a much higher weight on the ECJ's opinion, it will probably still put *some* weight on the GCC's position, to avoid a possible German backlash. On the other hand, a ruling by the ECJ that only confirms the OMT under the restrictive interpretation suggested by the GCC would probably leave the OMT much less effective. The ECB has issued a quick response, reiterating that it considers the OMT to be within its mandate. Nonetheless, we think the GCC view means the ECB is more likely to rely on other measures, such as another LTRO or purchases of private assets, while QE via government bond purchases to address deflation risk is not ruled out, but also somewhat contentious.

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Appendix A-1

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