

Economists' Forum

European Court's Pringle judgment: good law, bad economics

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European court ruled that stability mechanism was not contrary to EU law. Image by Getty

By Professor Simon Deakin

Courts don't often try to decide the direction of economic policy. However, in effect, this is what the European Court has recently done. In its Pringle judgment the court made a number of important decisions on the legality of bail-out policies being pursued by the European Union.

It ruled that the establishment of the European Stability Mechanism – the fund through which financial assistance will in future be channelled to eurozone states facing the possibility of bankruptcy – was not contrary to EU law. By implication, the ruling also supports the recent attempts by the European Central Bank to shore up the euro by buying the government bonds of debtor states on secondary markets (that is, buying them from commercial banks that have first purchased them from governments).

But the court went further, insisting that the legality of the ESM will in future be dependent on the application of strict conditionality in the terms on which financial assistance is made. In other words, financial assistance under the ESM will only be lawful if it comes with strict conditions, which in practice will amount to instructions to privatise state assets, cut welfare expenditure and abolish labour laws, which currently protect workers against poverty pay and job insecurity. The ECB's bond-buying programmes will be similarly constrained.

In ruling that the ESM is legal, the court gave some much needed flexibility to the EU's emerging economic constitution. The ESM was established in a treaty agreed by the eurozone's members outside the main structure of EU law. Opponents of the stability mechanism argued that only the EU itself had the competence to act in the area of monetary policy. The court sidestepped this argument by drawing a distinction between

monetary policy (maintaining price stability) and economic policy (ensuring the wider economic stability of the eurozone). In this way it could conclude that the establishment of the ESM was within the power of the eurozone states. Behind this rather formal legal distinction lay a debate about the steps that could, and should, be taken to save the euro.

The Pringle judgment, in validating the steps taken to preserve the single currency, is a landmark in EU law because it recognises the need for institutional adaptation to deal with an existential crisis that is putting at risk not just the euro, but the wider EU.

But the court's flexibility only went so far. Rather than limiting itself to a judgment on the narrow point of EU law before it, the court ventured into new territory, staking out a claim to channel the future direction of economic policy in the eurozone. This is where conditionality comes in. The court's ruling is intended to give no leeway to the European Commission and ECB in their future dealings with debtor states; financial assistance will not be permitted if it is not linked to structural adjustment packages aimed at cutting welfare expenditure and driving down wages.

At least for the time being, the commission and ECB need no encouragement to go down this path. Yet the results of pursuing this policy with the debtor states since 2010 have been little short of catastrophic. Cuts to social security benefits and wages, and the removal of basic labour protections, have taken demand out of their economies, while doing nothing to address the underlying causes of the crisis.

Under these circumstances, the last thing the EU should be doing is taking additional steps to depress wages and growth. To make this policy the cornerstone of the EU's emerging economic constitution would be a catastrophic error. The policy was misconceived even for the "good times" of the eurozone's early years. But to pursue it to the bitter end in the face of the existential crisis currently facing the union risks undermining all the steps taken to this point to save the single currency. Simply put, without economic growth there is no prospect of confidence returning to financial markets, and the crisis facing the eurozone will continue until the pressures on governments become too much to bear.

To save the euro, and the EU, will require more flexibility in future from its organs and institutions. The court, if it is to play any role at all in this process other than getting out of the way, should recognise the need for a growth-orientated economic policy. If the court were to resist this policy shift in future, it would run the risk of irrelevance at best or, at worst, a loss of legitimacy of the kind that will do the cause of EU law no favours, even if the EU itself survives.

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