



Court of Justice of the European Union

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Advocate General's Opinion in Joined Cases C-422/19  
Johannes Dietrich and C-423/19 Norbert Häring v Hessischer Rundfunk

## **According to Advocate General Pitruzzella, EU law provides that creditors have an obligation in principle to accept cash in euros for the payment of monetary debts**

*The European Union and the Member States can, however, in exercising powers other than those relating to monetary policy, impose, under specific conditions, limits on the use of euro banknotes as a means of payment, in order to pursue public interest objectives*

Two German citizens, required to pay a radio and television licence fee in the *Land* of Hesse (Germany), offered to pay that fee to Hessischer Rundfunk (the public broadcaster for the *Land* of Hesse) in cash. Citing its payment procedure rules, according to which the fee may not be paid in cash, Hessischer Rundfunk rejected the payment offers of those citizens and sent them payment notices.

Those two German citizens challenged those payment notices and the case reached the Bundesverwaltungsgericht (Federal Administrative Court, Germany). Before that court, they submit that both national law (in particular, Paragraph 14 of the Gesetz über die Deutsche Bundesbank (Law on the German Central Bank); 'the BBankG') and EU law<sup>1</sup> make provision for an unconditional and unrestricted obligation to accept euro banknotes as a means for the settlement of monetary debts. That obligation, they argue, may be restricted only by a contractual agreement between the parties or on the basis of an authorisation under federal or EU law. There can be no justification for excluding cash payments for practical reasons linked to 'mass procedures', in other words, situations in which there are an extremely large number of fee payers.

The Bundesverwaltungsgericht considers that the payment of the radio and television licence fee in cash, precluded under the Hessischer Rundfunk payment procedure rules, is contrary to the higher-ranking provision of federal law contained in Paragraph 14 of the BBankG, which provides that euro banknotes are the sole 'unrestricted' legal tender. That court asks whether that provision of the BBankG is compatible with the European Union's exclusive competence for monetary policy. It is, in addition, uncertain whether EU law itself actually contains a prohibition precluding public authorities of a Member State from refusing the fulfilment, by means of euro banknotes, of a statutorily imposed payment obligation, which would mean that the rules of Hessischer Rundfunk are incompatible with EU law. The present case therefore raises new questions with constitutional implications, concerning the extent of the European Union's exclusive competence in the area of monetary policy and the effects of the legal tender of euro banknotes provided for in EU law. It also raises the issue of whether Member States whose currency is the euro may adopt national measures restricting the use of cash.

In today's Opinion, Advocate General Giovanni Pitruzzella observes, first of all, that, within the EU system of competences laid down in the Treaties, when exclusive competence is conferred on the European Union in a specific area, only it may legislate and adopt legally binding acts in that area

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<sup>1</sup> The third sentence of Article 128(1) of the Treaty on the Functioning of the European Union (TFEU), incorporated into the third sentence of the first paragraph of Article 16 of Protocol No 4 on the Statute of the European System of Central Banks and of the European Central Bank and Article 10 of Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro (OJ 1998 L 139, p. 1).

and Member States lose all rights in that respect.<sup>2</sup> As regards monetary policy specifically, according to the Advocate General, **the exclusive competence conferred on the European Union** is not limited to the definition and conduct of monetary policy in operational terms (monetary policy 'in the strict sense'), but also **includes all the powers and competences necessary for the creation and proper functioning of the single currency, the euro**. It also includes a regulatory dimension relating to the single currency, which includes the definition and regulation of its status as legal tender and, in particular, that of euro banknotes and coins. **As a result, a provision of national law adopted by a Member State whose currency is the euro which, by its objective and content, governs the status of legal tender of euro banknotes, encroaches on the exclusive competence conferred on the European Union and is, therefore, incompatible with EU law.**

That being said, the Advocate General specifies, however, that **the exclusive competence conferred on the European Union in relation to the single currency does not go so far as to include a general competence to regulate the procedures for settling pecuniary obligations, whether under private law or public law, which has been left to the Member States**. It follows that a Member State can adopt national legislation which, by its objective and content, does not constitute a set of rules on the status of legal tender of euro banknotes, but **governs the organisation and functioning of the public administration, providing for an obligation for that administration to accept cash payments from citizens**.

It is for the Bundesverwaltungsgericht, which alone is competent to determine the exact scope of the national legislation, to establish whether Paragraph 14 of the BBankG constitutes a provision which, by its objective and content, lays down rules on the status of legal tender of euro banknotes. According to the Advocate General, it seems that that paragraph is aimed at supplementing the concept of legal tender in EU law as regards banknotes. Should that be the case, it would, therefore, have to be found that that paragraph governs the status of legal tender of euro banknotes, thereby encroaching on the European Union's exclusive competence in the area of monetary policy, and on that ground would have to be disapplied.

In response to another question from the Bundesverwaltungsgericht, the Advocate General observes that, **in the absence of a legal definition of the concept of legal tender of euro banknotes, it is for the Court of Justice to determine, by way of interpretation, the scope of that concept of EU law**.

In the light of an analysis of the relevant guidance on interpretation provided by EU law,<sup>3</sup> Advocate General Pitruzzella concludes that, as EU law currently stands, **the concept of legal tender as regards banknotes must be understood as entailing in principle the mandatory acceptance of banknotes by the creditor of a payment obligation, with two exceptions: (i) where the contracting parties in exercising their contractual freedom have agreed on other means of payment than cash and (ii) where the European Union or a Member State whose currency is the euro, in exercising their own competences other than those relating to monetary policy, have adopted legislation, which by its objective and content, does not constitute a set of rules on legal tender but imposes, in pursuit of the public interest, limitations on euro banknotes as a means of payment**. Such limitations are, however, compatible with the EU law concept of legal tender as regards euro banknotes, provided that **they do not lead in fact or in law to the complete abolition of euro banknotes, that they are established for public reasons and that other lawful means of payment for the settlement of monetary debts are available. They must also be proportionate** and therefore appropriate for attaining the public interest objective pursued and not go beyond what is necessary in order to achieve that objective.

The Advocate General also notes that **although the European Union does not provide for an absolute right to payment in cash in all cases, a direct link between the value of legal tender**

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<sup>2</sup> Pursuant to Article 2(1) TFEU, in such cases Member States may adopt legally binding acts themselves only if so empowered by the European Union or for the implementation of Union acts.

<sup>3</sup> Commission Recommendation 2010/191/EU of 22 March 2010 on the scope and effects of legal tender of euro banknotes and coins (OJ 2010 L 83, p. 70) and recital 19 of Regulation No 974/98.

**attributed to cash and the exercise of fundamental rights may exist in cases where there is a social inclusion element to the use of cash.** The use of money other than in its physical form (namely, cash) currently requires the use of basic financial services, to which a not insignificant number of people do not yet have access. For those **vulnerable individuals, cash is the only form of accessible money and thus the only means of exercising their fundamental rights linked to the use of money.** Measures restricting the use of cash as a means of payment should, therefore, take into account the social inclusion element of cash as a means of payment for those vulnerable people and should ensure the effective existence of other lawful means for the settlement of monetary debts. The Advocate General considers that there is **an obligation to take appropriate measures to enable vulnerable people who do not have access to basic financial services to discharge their obligations, particularly those of a public nature, without additional costs.**

It is, however, for the Bundesverwaltungsgericht to determine whether a national provision, such as the rules for the payment of radio and television licence fees of the Hessischer Rundfunk, laying down limitations on payment in euro banknotes, is compatible with EU law and with the status of legal tender of euro banknotes. In that regard, the Advocate General notes that the measure appears to provide for an absolute exclusion, without exception, of the use of euro banknotes for the payment of the radio and television licence fee, without the social inclusion element of cash for the vulnerable people referred to above being taken into account.

The Advocate General emphasises, lastly, that it can in no way be inferred from the provision of the TFEU that confers the status of primary-law concept on legal tender,<sup>4</sup> or from any other provision of EU law, that the constitutional legislature of the Union intended to exclude **the possibility for the European Union of assigning, in addition to euro banknotes and coins, the status of legal tender to other forms of currency that are not necessarily physical** such as, for example, a digital currency (central bank digital currency).

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**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit 📞 (+352) 4303 3355

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<sup>4</sup> Article 128(1).