

Provisional text

## JUDGMENT OF THE COURT (Grand Chamber)

26 January 2021 (\*)

(Reference for a preliminary ruling – Economic and monetary policy – Article 2(1) and Article 3(1)(c) TFEU – Monetary policy – Exclusive competence of the European Union – Article 128(1) TFEU – Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank – Article 16, first paragraph – Concept of ‘legal tender’ – Effects – Obligation to accept euro banknotes – Regulation (EC) No 974/98 – Whether possible for Member States to impose limitations on payments by means of banknotes and coins denominated in euro – Conditions – Regional legislation precluding the payment in cash of a radio and television licence fee to a regional public broadcasting body)

In Joined Cases C-422/19 and C-423/19,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Bundesverwaltungsgericht (Federal Administrative Court, Germany), made by decisions of 27 March 2019, received at the Court on 31 May 2019, in the proceedings

**Johannes Dietrich** (C-422/19),

**Norbert Häring** (C-423/19)

v

**Hessischer Rundfunk,**

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, A. Arabadjiev, A. Prechal, M. Vilaras and N. Piçarra, Presidents of Chambers, T. von Danwitz, C. Toader, M. Safjan, D. Šváby, S. Rodin, C. Lycourgos, P.G. Xuereb (Rapporteur), L.S. Rossi and I. Jarukaitis, Judges,

Advocate General: G. Pitruzzella,

Registrar: D. Dittert, Head of Unit,

having regard to the written procedure and further to the hearing on 15 June 2020,

after considering the observations submitted on behalf of:

- Mr Dietrich and Mr Häring, by C.A. Gebauer, Rechtsanwalt,
- Hessischer Rundfunk, by H. Kube, Professor of Law,
- the German Government, by J. Möller and S. Eisenberg, acting as Agents,
- the French Government, by E. de Moustier and A. Daly, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, and by P. Gentili, avvocato dello Stato,
- the European Commission, by J. Baquero Cruz and T. Maxian Rusche, acting as Agents,

– the European Central Bank (ECB), by M. Rötting, F. Malfrère, C. Kroppenstedt and R. Aragón Plaza, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 29 September 2020,

gives the following

## Judgment

- 1 These requests for a preliminary ruling concern the interpretation of Article 2(1) TFEU, read in conjunction with Article 3(1)(c) TFEU; of the third sentence of Article 128(1) TFEU; 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 (OJ 2016 C 202, p. 230; ‘the Protocol on the ESCB and the ECB’); and of 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).
- 2 The requests have been made in two sets of proceedings between Mr Johannes Dietrich (Case C-422/19) and Mr Norbert Häring (Case C-423/19), and Hessischer Rundfunk (the public broadcaster for the *Land* of Hesse, Germany) concerning the payment of a radio and television licence fee due to Hessischer Rundfunk.

### Legal context

#### *European Union law*

##### *The Protocol on the ESCB and the ECB*

- 3 The first paragraph of Article 16 of the Protocol on the ESCB and the ECB is worded as follows:

‘In accordance with Article 128(1) of the [FEU Treaty], the Governing Council shall have the exclusive right to authorise the issue of euro banknotes within the Union. The [European Central Bank (ECB)] and the national central banks may issue such notes. The banknotes issued by the ECB and the national central banks shall be the only such notes to have the status of legal tender within the Union.’

##### *Regulation No 974/98*

- 4 Recital 19 of Regulation No 974/98 reads as follows:

‘Whereas banknotes and coins denominated in the national currency units lose their status of legal tender at the latest six months after the end of the transitional period; whereas limitations on payments in notes and coins, established by Member States for public reasons, are not incompatible with the status of legal tender of euro banknotes and coins, provided that other lawful means for the settlement of monetary debts are available’.

- 5 Under Article 10 of that regulation:

‘As from 1 January 2002, the ECB and the central banks of the participating Member States shall put into circulation banknotes denominated in euro. Without prejudice to Article 15, these banknotes denominated in euro shall be the only banknotes which have the status of legal tender in all these Member States.’

- 6 According to Article 11 of that regulation:

‘As from 1 January 2002, the participating Member States shall issue coins denominated in euro or in cent and complying with the denominations and technical specifications which the Council may lay down in accordance with the second sentence of Article [128](2) [TFEU]. Without prejudice to Article 15, these coins shall be the only coins which have the status of legal tender in all these Member States. Except for the issuing authority and for those persons specifically designated by the national legislation of the issuing Member State, no party shall be obliged to accept more than 50 coins in any single payment.’

*Recommendation 2010/191/EU*

7 Recitals 1 to 4 of 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) are worded as follows:

- ‘(1) The legal tender status of euro banknotes is laid down by Article 128 [TFEU], in the chapter on monetary policy. According to Article 3(1)(c) [TFEU], the Union shall have exclusive competence as regards monetary policy for the Member States whose currency is the euro (the participating Member States).
- (2) According to Article 11 of [Regulation No 974/98], the euro coins shall be the only coins which have the status of legal tender in the participating Member States.
- (3) There is currently some uncertainty at euro area level with regards to the scope of legal tender and the consequences thereof.
- (4) This recommendation is based on the main conclusions of a report prepared by a working group consisting of representatives from Ministries of Finance and National Central Banks of the euro area.’

8 Points 1 to 4 of that recommendation provide as follows:

‘1. Common definition of legal tender

Where a payment obligation exists, the legal tender of euro banknotes and coins should imply:

(a) Mandatory acceptance:

The creditor of a payment obligation cannot refuse euro banknotes and coins unless the parties have agreed on other means of payment.

(b) Acceptance at full face value:

The monetary value of euro banknotes and coins is equal to the amount indicated on the banknotes and coins.

(c) Power to discharge from payment obligations:

A debtor can discharge himself from a payment obligation by tendering euro banknotes and coins to the creditor.

2. Acceptance of payments in euro banknotes and coins in retail transactions

The acceptance of euro banknotes and coins as means of payments in retail transactions should be the rule. A refusal thereof should be possible only if grounded on reasons related to the “good faith principle” (for example the retailer has no change available).

3. Acceptance of high denomination banknotes in retail transactions

High denomination banknotes should be accepted as means of payment in retail transactions. A refusal thereof should be possible only if grounded on reasons related to the “good faith principle” (for example the face value of the banknote tendered is disproportionate compared to the amount owed to the creditor of the payment).

4. Absence of surcharges imposed on the use of euro banknotes and coins

No surcharges should be imposed on payments with euro banknotes and coins.’

### *German law*

9 Paragraph 14(1) of the Gesetz über die Deutsche Bundesbank (Law on the German central bank), in the version published on 22 October 1992 (BGBl. 1992 I, p. 1782), as amended by the Law of 4 July 2013 (BGBl. 2013 I, p. 1981) (‘the BBankG’), provides:

‘Without prejudice to Article 128(1) TFEU, the Deutsche Bundesbank [(German central bank)] shall have the exclusive right to issue banknotes in the area in which this Law applies. Banknotes denominated in euro shall be the sole unrestricted legal tender. ...’

10 Paragraph 2(1) of the Rundfunkbeitragsstaatsvertrag (State Treaty on radio and television licence fees) of 15 to 21 December 2010, in the version resulting from the Fünfzehnter Rundfunkänderungsstaatsvertrag (Fifteenth Amending State Broadcasting Treaty), as ratified by the *Land* of Hesse (Germany) by the Law of 23 August 2011 (GVBl. I 2011, p. 382) (‘the RBStV’), is worded as follows:

‘In the private sphere, a radio and television licence fee is payable for each dwelling by its owner (the licence fee payer).’

11 Paragraph 7(3) of the RBStV states:

‘The radio and television licence fee shall be payable each month. It must be paid in the middle of a three-month period, for a period of three months respectively.’

12 Paragraph 9(2) of the RBStV provides:

‘The competent Landesrundfunkanstalt (regional broadcasting organisation) shall be authorised to establish by means of rules (*Satzung*) the procedure

...

2. for payment of the radio and television licence fee and for exemption from, or reduction of, the licence fee.

...’

13 Paragraph 10 of the RBStV states:

‘...’

(2) The radio and television licence fee must be paid to the competent regional broadcasting organisation as an obligation to dispatch payment to the payee (*Schickschuld*) ...

...

(5) Arrears of the radio and television licence fee shall be determined by the competent regional broadcasting organisation. ...’

14 Paragraph 10(2) of the Satzung des Hessischen Rundfunks über das Verfahren zur Leistung der Rundfunkbeiträge (Regulations of Hessischer Rundfunk on the procedure for the payment of radio and television licence fees) of 5 December 2012 ('the licence fee rules'), adopted on the basis of Paragraph 9(2) of the RBStV, is worded as follows:

'The payer of the radio and television licence fee may not pay the licence fee in cash, but only by the following means of payment:

1. SEPA direct debit,
2. bank transfer,
3. standing order.'

### **The disputes in the main proceedings and the questions referred for a preliminary ruling**

15 Mr Dietrich and Mr Häring, who own dwellings within the geographical area covered by Hessischer Rundfunk, offered to pay the radio and television licence fee due pursuant to Paragraph 2(1) of the RBStV for the second quarter of 2015 and the first quarter of 2016, respectively, in cash.

16 Hessischer Rundfunk refused that offer on the ground that Paragraph 10(2) of the licence fee rules provides that the licence fee may not be paid in cash but must be paid by direct debit, bank transfer or standing order, and sent them payment notices fixing the radio and television licence fee arrears due from them, together with a late payment surcharge.

17 The applicants in the main proceedings brought actions for annulment of those payment notices. By judgments of 31 October 2016, the Verwaltungsgericht Frankfurt am Main (Administrative Court, Frankfurt am Main, Germany) dismissed their actions. By judgments of 13 February 2018, the Hessischer Verwaltungsgerichtshof (Higher Administrative Court of the *Land* of Hesse, Germany) dismissed their appeals against those judgments.

18 The applicants in the main proceedings brought appeals on a point of law (*Revision*) against those judgments before the referring court, the Bundesverwaltungsgericht (Federal Administrative Court, Germany). In their appeals, they submit that the second sentence of Paragraph 14(1) of the BBankG and the third sentence of Article 128(1) TFEU make provision for an unconditional and unrestricted obligation to accept euro banknotes as a means for the settlement of monetary debts. According to the applicants in the main proceedings, this obligation may be limited only by a contractual agreement between the parties or on the basis of an authorisation provided for under federal or EU law. However, its exclusion could not be justified on any practical ground, such as – as in the present case – the large number of licence fee payers.

19 The referring court states, as a preliminary point, that the appeals on a point of law should be upheld in the light of domestic law. In that regard, it explains that the exclusion of the possibility of paying the radio and television licence fee by means of euro banknotes, which stems from the licence fee rules, infringes a higher-ranking provision of federal law, namely the second sentence of Paragraph 14(1) of the BBankG. Considerations relating to the scheme of that provision and, in particular, its genesis, as well as its spirit and purpose, militate in favour of interpreting that provision as requiring public authorities to accept euro banknotes in fulfilment of payment obligations imposed by statute. Under German federal law there is no exception to that obligation in the context of mass recovery procedures such as the collection of the radio and television licence fee at issue in the main proceedings. The referring court states that there are no indications that the possibility of paying the radio and television licence fee in cash would jeopardise the funding of broadcasting organisations enshrined in constitutional law.

- 20 In that context, the referring court considers that the disputes in the main proceedings raise three questions on which a preliminary ruling by the Court of Justice is necessary.
- 21 In the first place, the referring court queries whether the second sentence of Paragraph 14(1) of the BBankG is compatible with the exclusive competence of the European Union in the area of monetary policy for the Member States whose currency is the euro, under Article 3(1)(c) TFEU, given that, according to Article 2(1) TFEU, only the European Union may legislate and adopt legally binding acts in that area.
- 22 The referring court notes in that regard that the FEU Treaty does not contain any definition of ‘monetary policy’, as is apparent from the case-law of the Court, and adds that it is unable to decide whether the exclusive competence of the European Union in the area of monetary policy extends to governing the legal consequences associated with the status of legal tender of euro banknotes, in particular the obligation imposed on public authorities to accept such banknotes.
- 23 The referring court observes that the obligation on public authorities to accept euro banknotes does not relate to the monetary policy objective of maintaining price stability, nor is there a direct connection with the instruments specified in primary law for achieving that objective. In particular, the right to issue euro banknotes that is conferred on the ECB and the national central banks in Article 128(1) TFEU is not restricted or modified by that obligation. However, the referring court considers that the case-law of the Court of Justice could be interpreted as meaning that rules relating to the effects of legal tender of banknotes denominated in euro, and thus to the functioning of monetary transactions, do fall within the scope of monetary policy. Furthermore, it is conceivable that, as a measure that is necessary for the use of the euro as a single currency, such a rule could be adopted on the basis of Article 133 TFEU and, therefore, that it could be regarded as falling within the exclusive competence of the European Union in accordance with Article 2(1) and (6) TFEU.
- 24 In the second place, the referring court states that the question whether, in view of the European Union’s exclusive competence in the area of monetary policy for the Member States whose currency is the euro, a national legislature is authorised to adopt a provision such as the second sentence of Paragraph 14(1) of the BBankG does not arise if, under EU law, a Member State’s public authorities are prohibited from refusing the fulfilment of statutorily imposed payment obligations by means of banknotes denominated in euro. In those circumstances, Paragraph 10(2) of the licence fee rules would be contrary to EU law.
- 25 The referring court recalls in that regard that, in accordance with the third sentence of Article 128(1) TFEU, the third sentence of the first paragraph of Article 16 of the Protocol on the ESCB and the ECB, and the second sentence of Article 10 of Regulation No 974/98, banknotes denominated in euro are to be the only banknotes to have the status of legal tender within the European Union. An obligation to accept banknotes denominated in euro cannot automatically be inferred from the term ‘legal tender’, which is defined neither in the FEU Treaty, nor in the Protocol on the ESCB and the ECB, nor in Regulation No 974/98. Recital 19 of that regulation merely suggests that, according to the EU legislature, limitations on the possibility of making payments in cash do not automatically affect the status of legal tender of euro banknotes and coins.
- 26 The referring court also recalls that point 1 of Recommendation 2010/191, entitled ‘Common definition of legal tender’, provides that the legal tender of euro banknotes and coins should imply, in particular, their ‘mandatory acceptance’ by the creditor of a payment obligation, subject to certain exceptions. The referring court points out, however, that, in accordance with the fifth paragraph of Article 288 TFEU, recommendations by the institutions are to have no binding force, so that it is unclear how much importance should be attached to that recommendation.
- 27 In the third place, the referring court considers that the answer to the question whether, in view of the European Union’s exclusive competence in the area of monetary policy for the Member States whose currency is the euro, the German legislature was authorised to adopt the second sentence of Paragraph 14(1) of the BBankG is also not required for the resolution of the disputes in the main

proceedings if a national rule providing for an obligation to accept euro banknotes in fulfilment of statutorily imposed payment obligations can be applied when the European Union has not exercised its exclusive competence. The referring court considers, however, that the existing case-law of the Court of Justice does not enable it to determine whether that is the case.

28 In those circumstances the Bundesverwaltungsgericht (Federal Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- ‘(1) Does the exclusive competence that the European Union, pursuant to Article 2(1) TFEU, in conjunction with Article 3(1)(c) TFEU, enjoys in the area of monetary policy for the Member States whose currency is the euro preclude a legal act of one of those Member States that provides for an obligation on the part of public authorities of the Member State to accept euro banknotes in the fulfilment of statutorily imposed payment obligations?
- (2) Does the status as legal tender of banknotes denominated in euro, as established in the third sentence of Article 128(1) TFEU, the third sentence of the first paragraph of Article 16 of [the Protocol on the ESCB and the ECB] and the second sentence of Article 10 of [Regulation No 974/98] contain a prohibition precluding public authorities of a Member State from refusing fulfilment of a statutorily imposed payment obligation in such banknotes, or does EU law leave room for provisions that exclude payment in euro banknotes for certain statutorily imposed payment obligations?
- (3) If the first question is answered in the affirmative and the second question is answered in the negative: Can a legal act of a Member State whose currency is the euro which is adopted in the context of the European Union’s exclusive competence in the area of monetary policy be applied to the extent to which, and for so long as, the European Union has not made use of its competence?’

## Consideration of the questions referred

### *The first and third questions*

29 By its first and third questions, which it is appropriate to answer together, the referring court asks, in essence, whether Article 2(1) TFEU, read in conjunction with Article 3(1)(c) TFEU, must be interpreted as meaning that, irrespective of any exercise by the European Union of its exclusive competence in the area of monetary policy for the Member States whose currency is the euro, it precludes legislation of a Member State that obliges public authorities to accept euro banknotes in the fulfilment of statutorily imposed payment obligations.

30 As a preliminary point it should be noted that, in their written observations, the European Commission, Hessischer Rundfunk and the ECB expressed doubts about the interpretation of the second sentence of Paragraph 14(1) of the BBankG adopted by the referring court, according to which public authorities are obliged by that provision to accept euro banknotes in the fulfilment of statutorily imposed payment obligations. In their view, that interpretation departs from the wording of the provision, which merely provides that banknotes denominated in euro are to be the sole unrestricted legal tender.

31 In that respect, it should be recalled that, as far as the interpretation of provisions of national law is concerned, the Court is in principle required to rely on the description given in the order for reference. According to settled case-law, the Court does not have jurisdiction to interpret the internal law of a Member State (judgment of 17 December 2020, *Generalstaatsanwaltschaft Berlin (Extradition to Ukraine)*, C-398/19, EU:C:2020:1032, paragraph 62 and the case-law cited).

32 In those circumstances, the answer to the first question referred for a preliminary ruling must start from the premiss that the second sentence of Paragraph 14(1) of the BBankG obliges public authorities to accept euro banknotes in fulfilment of statutorily imposed payment obligations.

- 33 It should be noted in that regard that, according to Article 3(1)(c) TFEU, the European Union is to have exclusive competence in the area of monetary policy for the Member States whose currency is the euro.
- 34 It must also be borne in mind that the FEU Treaty contains no precise definition of ‘monetary policy’ but defines, in the provisions relating to that policy, both the objectives of monetary policy and the instruments which are available to the European System of Central Banks (ESCB) for the purpose of implementing it (judgment of 11 December 2018, *Weiss and Others*, C-493/17, EU:C:2018:1000, paragraph 50 and the case-law cited).
- 35 It should be noted that the provisions of the FEU Treaty relating to monetary policy are set out in Title VIII of Part Three thereof, entitled ‘Economic and monetary policy’.
- 36 Article 119 TFEU, which introduces that title, states, in paragraph 1, that the activities of the Member States and the European Union are to include, as provided in the Treaties, the adoption of an economic policy which is based on the close coordination of Member States’ economic policies, on the internal market and on the definition of common objectives, and conducted in accordance with the principle of an open market economy with free competition. Paragraph 2 of that article states that these activities are to include a single currency, the euro, and the definition and conduct of a single monetary policy and exchange-rate policy the primary objective of both of which is to be to maintain price stability and, without prejudice to this objective, to support the general economic policies in the European Union, in accordance with the principle of an open market economy with free competition.
- 37 As the Advocate General observed in point 59 of his Opinion, it therefore follows from Article 119(2) TFEU that the activities of the Member States and the European Union comprise three elements: a single currency (the euro), the definition and conduct of a single monetary policy, and the definition and conduct of a single exchange-rate policy.
- 38 Therefore, the concept of ‘monetary policy’ is not limited to its operational implementation, which, under the first indent of Article 127(2) TFEU, is one of the basic tasks of the ESCB, but also entails a regulatory dimension intended to guarantee the status of the euro as the single currency.
- 39 Such an interpretation of the concept of ‘monetary policy’ is supported by the primary objective of that policy, as set out in Article 127(1) and Article 282(2) TFEU, that is, to maintain price stability. As the Advocate General noted, in essence, in point 66 of his Opinion, if the status of the euro as the single currency could be understood differently and governed by different rules in the Member States whose currency is the euro, the singleness of the single currency would be called into question and that objective of maintaining price stability would thereby be seriously jeopardised.
- 40 That interpretation of the concept of ‘monetary policy’ is also supported by the wording of Articles 128 and 133 TFEU, in Chapter 2 of Title VIII of Part Three of the FEU Treaty, which may be regarded as monetary law provisions linked to the status of the euro as the single currency.
- 41 As regards Article 128 TFEU, by stating, in paragraph 1, that the ECB is to have the exclusive right to authorise the issue of euro banknotes within the European Union, that the ECB and the national central banks may issue such notes, and that the banknotes thus issued are to be the only such notes to have the status of legal tender within the European Union, that article lays down rules on the issue of euro banknotes in the European Union and, in conjunction with the third sentence of the first paragraph of Article 16 of the Protocol on the ESCB and the ECB, enshrines in primary law the status of those banknotes as legal tender. Furthermore, by providing, in paragraph 2, that Member States may issue euro coins subject to approval by the ECB of the volume of the issue, that article also lays down rules to regulate the issue of euro coins.
- 42 Article 133 TFEU empowers the EU legislature, without prejudice to the powers of the ECB, to lay down the measures of secondary law necessary for the use of the euro as the single currency.

- 43 Thus, Article 128(1) and Article 133 TFEU, as the Advocate General observed in essence in points 64 to 66 of his Opinion, underpin the singleness of the euro and are a precondition for the effective conduct of the European Union's monetary policy.
- 44 First, by attributing the status of 'legal tender' only to euro banknotes issued by the ECB and the national central banks, Article 128(1) TFEU, like the third sentence of the first paragraph of Article 16 of the Protocol on the ESCB and the ECB, affirms the official nature of those banknotes in the euro area, excluding the possibility that other banknotes may also qualify for that status.
- 45 Since Article 128(1) TFEU does not make reference to the law of the Member States for the purpose of determining the meaning and scope of the concept of 'legal tender' referred to therein, that concept is a concept of EU law that must be given an autonomous and uniform interpretation throughout the European Union, which interpretation must take into account not only the wording of the provisions in which it appears but also the context of those provisions and the objective pursued by them (see, to that effect, judgment of 16 July 2020, *AFMB*, C-610/18, EU:C:2020:565, paragraph 50 and the case-law cited).
- 46 It should be noted in that regard that the concept of 'legal tender' of a means of payment denominated in a currency unit signifies, in its ordinary sense, that that means of payment cannot generally be refused in settlement of a debt denominated in the same currency unit, at its full face value, with the effect of discharging the debt.
- 47 That interpretation according to its ordinary meaning is supported by Recommendation 2010/191, which specifically concerns the scope and effects of legal tender of euro banknotes and coins, albeit that the status of legal tender of coins denominated in euro was laid down in Article 11 of Regulation No 974/98.
- 48 It is true that, under the fifth paragraph of Article 288 TFEU, recommendations are not intended to produce binding effects and are not capable of creating rights on which individuals may rely before a national court. They are, however, among the legal acts of the European Union; the Court may therefore take them into consideration where they provide useful guidance for the interpretation of the relevant provisions of EU law.
- 49 Point 1 of Recommendation 2010/191 sets out, as its title indicates, the common definition of 'legal tender', stating that, where a payment obligation exists, the legal tender of euro banknotes and coins should imply, first, mandatory acceptance of those banknotes and coins; second, their acceptance at full face value; and, third, their power to discharge from payment obligations. That point therefore shows that that concept of 'legal tender' encompasses, inter alia, an obligation in principle to accept banknotes and coins denominated in euro for payment purposes.
- 50 Second, in so far as it allows the EU legislature to lay down the measures necessary for the use of the euro as the single currency, Article 133 TFEU, which replaced Article 123(4) EC, which itself had replaced Article 109 L(4) of the EC Treaty, reflects the need to establish uniform principles for all Member States whose currency is the euro, in order to safeguard the overall interests of the Economic and Monetary Union and of the euro as the single currency and, consequently, as has been noted in paragraph 39 of this judgment, to contribute to the pursuit of the primary objective of the European Union's monetary policy, which is to maintain price stability.
- 51 It follows that the competence originally provided for in Article 109 L(4) of the EC Treaty, then in Article 123(4) EC, and now laid down in Article 133 TFEU, empowers the EU legislature alone to specify the legal rules governing the status of legal tender accorded to banknotes denominated in euro by Article 128(1) TFEU and by the third sentence of the first paragraph of Article 16 of the Protocol on the ESCB and the ECB, and the status of legal tender accorded to coins denominated in euro by Article 11 of Regulation No 974/98, in so far as that is necessary for the use of the euro as the single currency.
- 52 In accordance with Article 2(1) TFEU, such exclusive competence precludes any competence on the part of the Member States in the matter, unless they are acting on the basis that they have been empowered by

the European Union to do so or for the implementation of EU acts.

53 It should be pointed out in that respect, for the purpose more specifically of answering the third question, that, even in a situation where the European Union has not exercised its exclusive competence, the adoption or retention by a Member State of a provision falling within that competence could not be justified by that circumstance alone.

54 As the Advocate General observed in point 39 of his Opinion, where competence is conferred exclusively on the European Union, the loss of competence by the Member States occurs immediately and, unlike in the case of areas falling within a shared competence, it does not matter, for the purposes of that loss, whether or not the European Union has exercised its competence (see, to that effect, judgment of 5 May 1981, *Commission v United Kingdom*, 804/79, EU:C:1981:93, paragraph 20).

55 However, it cannot be considered necessary for the use of the euro as the single currency within the meaning of Article 133 TFEU and, more specifically, for the establishment of the status of legal tender of banknotes denominated in euro, as provided for in Article 128(1) TFEU and in the third sentence of the first paragraph of Article 16 of the Protocol on the ESCB and the ECB, to impose an absolute obligation to accept those banknotes as a means of payment. It follows from the information contained in paragraphs 46 to 49 of the present judgment that that status as legal tender calls only for acceptance in principle of banknotes denominated in euro as a means of payment, not for absolute acceptance. Nor, moreover, is it necessary for the use of the euro as the single currency and, more specifically, for the preservation of the effectiveness as legal tender of cash denominated in euro that the EU legislature lay down exhaustively and uniformly the exceptions to that fundamental obligation, provided that every debtor is guaranteed to have the possibility, as a general rule, of discharging a payment obligation in cash.

56 It follows that the European Union's exclusive competence in matters of monetary policy is, as the Advocate General noted in point 98 of his Opinion, without prejudice to the competence of the Member States whose currency is the euro to regulate the procedures for settling pecuniary obligations, whether under public law or private law, provided, in particular, that the legislation does not affect the principle that, as a general rule, it must be possible to discharge a payment obligation in cash. Thus, that exclusive competence does not prevent a Member State, in the exercise of its own powers, such as the organisation of its public administration, from adopting a measure which obliges that administration to accept cash payments from citizens or, as envisaged in the context of the second question, which introduces, on public interest grounds, a derogation from that obligation for statutorily imposed payments, subject to compliance with certain conditions which will be specified in the examination of that question.

57 It is for the referring court, which alone has jurisdiction to interpret national law, to ascertain whether the second sentence of Paragraph 14(1) of the BBankG must be interpreted, in the light of its objective and content, as a measure adopted within the framework of the Member States' own competences, as described in the preceding paragraph.

58 In the light of the foregoing considerations, the answer to the first and third questions referred for a preliminary ruling is that Article 2(1) TFEU, read in conjunction with Article 3(1)(c), Article 128(1) and Article 133 TFEU, and with the third sentence of the first paragraph of Article 16 of the Protocol on the ESCB and the ECB, must be interpreted as meaning that, irrespective of any exercise by the European Union of its exclusive competence in the area of monetary policy for the Member States whose currency is the euro, it precludes a Member State from adopting a provision which, in the light of its objective and its content, establishes legal rules governing the status of legal tender of euro banknotes. It does not, however, preclude a Member State from adopting, in the exercise of a competence that is the Member State's own, such as the organisation of its public administration, a provision which requires that administration to accept payment in cash for the pecuniary obligations imposed by the administration.

### ***The second question***

- 59 By its second question, the referring court asks, in essence, whether the third sentence of Article 128(1) TFEU, the third sentence of the first paragraph of Article 16 of the Protocol on the ESCB and the ECB, and the second sentence of Article 10 of Regulation No 974/98 must be interpreted as precluding national legislation which excludes the possibility of discharging in cash a statutorily imposed payment obligation.
- 60 It should be pointed out that the answer to this question is necessary only if the referring court were to reach the conclusion, on the basis of the Court's answer to the first and third questions, that Paragraph 14(1) of the BBankG, interpreted in the manner set out in paragraph 32 of the present judgment, is not compatible with the exclusive competence of the European Union in respect of monetary policy for the Member States whose currency is the euro, and that the defendant in the main proceedings thus had the power to adopt Paragraph 10(2) of the licence fee rules.
- 61 It must be noted in that regard that the status of legal tender of euro banknotes is enshrined not only in primary law, in the third sentence of Article 128(1) TFEU and, with almost identical wording, in the third sentence of the first paragraph of Article 16 of the Protocol on the ESCB and the ECB, but also in secondary legislation, in the second sentence of Article 10 of Regulation No 974/98. In addition, as noted in paragraph 47 of the present judgment, while the FEU Treaty establishes only the status of legal tender of euro banknotes, the second sentence of Article 11 of that regulation also confers the status of legal tender on coins denominated in euro.
- 62 In that regard, although the terms of the provisions whose interpretation is sought in the context of the second question preclude the adoption of a national rule the object or effect of which is to abolish, in law or in fact, cash in euro, in particular by calling into question the possibility, as a general rule, of discharging a payment obligation in cash, they do not in themselves enable a determination to be made as to whether a national rule that merely limits the use of cash for the purpose of discharging a statutorily imposed payment obligation would also be contrary to EU law.
- 63 As regards the context of those provisions, it must be noted that recital 19 of Regulation No 974/98 states that limitations on payments in notes and coins, established by Member States for public reasons, are not incompatible with the status of legal tender of euro banknotes and coins, provided that other lawful means for the settlement of monetary debts are available.
- 64 It must be borne in mind in that regard that even though the preamble to an EU act has no binding legal force and cannot be relied on as a ground either for derogating from the actual provisions of the act in question or for interpreting those provisions in a manner that is clearly contrary to their wording, it may explain their content, since the recitals in that preamble constitute important elements for the purposes of interpretation that may clarify the intentions of the author of that act (see, to that effect, judgment of 19 December 2019, *Puppinnck and Others v Commission*, C-418/18 P, EU:C:2019:1113, paragraphs 75 and 76 and the case-law cited).
- 65 As regards, more specifically, the reference in recital 19 of Regulation No 974/98 to 'public reasons', it should be noted that, whereas certain language versions of that recital, such as the German-language version, use the expression 'reasons of public policy', other language versions, such as the English or the French, use the expression 'public reasons' or 'reasons of public interest'. The wording used in one language version of a provision of EU law cannot, however, serve as the sole basis for the interpretation of that provision, or be made to override the other language versions in that regard. Thus, in the event of such a disparity, the provision in question must be interpreted by reference to the general scheme and the purpose of the rules of which it forms part (see, to that effect, judgment of 9 July 2020, *Naturschutzbund Deutschland – Landesverband Schleswig-Holstein*, C-297/19, EU:C:2020:533, paragraph 43).
- 66 Since the limitations on payments in notes and coins denominated in euro may, in practice, be justified just as much on grounds of public policy relating to security or the fight against crime as by the public interest in ensuring the efficient organisation of payments in society, it is necessary, for the purpose of ensuring the uniform application of grounds for exception in all the Member States, to adopt the broader expression, 'reasons of public interest'.

- 67 In those circumstances, the second sentence of Article 10 and the second sentence of Article 11 of Regulation No 974/98, read in the light of recital 19 of that regulation, must be understood as meaning that, on the one hand, the status of legal tender of those notes and coins implies, in principle, an obligation to accept those notes and coins and, on the other hand, that obligation may, in principle, be restricted by the Member States for reasons of public interest.
- 68 It should be made clear that, as the Advocate General observed in point 129 of his Opinion and as noted by most of the interested parties that submitted observations, such restrictions must be proportionate to the public interest objective pursued.
- 69 In view of the fact that, by imposing such restrictions on the exercise of their sovereign powers, the Member States are limiting the possibility, recognised by EU law, of generally discharging a payment obligation in notes and coins denominated in euro, those Member States must ensure that the measures they take comply with the principle of proportionality, which is one of the general principles of EU law.
- 70 The principle of proportionality requires, according to the settled case-law of the Court of Justice, that the measures concerned are appropriate for attaining the legitimate objectives pursued by the legislation at issue and that they do not go beyond what is necessary in order to achieve those objectives (see, to that effect, judgment of 29 July 2019, *Spiegel Online*, C-516/17, EU:C:2019:625, paragraph 34 and the case-law cited).
- 71 In the present case, while it is for the referring court to ascertain whether the legislation at issue in the main proceedings complies with the conditions referred to in paragraphs 68 to 70 of the present judgment, the Court, when giving a preliminary ruling on a reference, may nonetheless, in appropriate cases, provide clarification to guide the national court in its decision (see, to that effect, judgment of 2 May 2019, *Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego*, C-614/17, EU:C:2019:344, paragraph 37 and the case-law cited).
- 72 As regards the reasons of public interest relied on to justify the exclusion, under the legislation at issue in the main proceedings, of cash payments of the radio and television licence fee, it should be noted that Hessischer Rundfunk stated in its written observations that, given the fact that there are approximately 46 million licence fee payers in Germany, the obligation to pay the radio and television licence fee by cashless means of payment is intended to ensure the effective recovery of the licence fee and to avoid substantial additional costs.
- 73 In that regard, it is indeed in the public interest that monetary debts to public authorities may be honoured in a way that does not involve those authorities in unreasonable expense which would prevent them from providing services cost-effectively.
- 74 It must therefore be held that the public interest reason relating to the need to ensure the fulfilment of a statutorily imposed payment obligation is capable of justifying a limitation on cash payments, in particular where the number of licence fee payers from whom the debt has to be recovered is very high.
- 75 As regards the condition that the measures in question must not go beyond what is necessary in order to achieve the objectives pursued, it is apparent from the order for reference that the legislation at issue in the main proceedings provides for lawful means of settlement of the radio and television licence fee other than cash, namely direct debit, bank transfer or standing order.
- 76 The limitation at issue in the main proceedings appears to be both appropriate and necessary in order to achieve the objective of actually recovering the radio and television licence fee, in that it enables the administration to avoid having to bear an unreasonable financial burden given the cost that would be involved in the widespread establishment of a procedure that allows licence fee payers to pay the radio and television licence fee in cash.

77 It is nevertheless for the referring court to ascertain whether such a limitation is proportionate to that objective, in particular in the light of the fact that the lawful alternative means of payment of the radio and television licence fee may not be readily accessible to everyone liable to pay it, which would entail providing for those without access to such means of payment to be able to pay in cash.

78 It follows from the foregoing that the answer to the second question is that the third sentence of Article 128(1) TFEU, the third sentence of the first paragraph of Article 16 of the Protocol on the ESCB and the ECB, and the second sentence of Article 10 of Regulation No 974/98 must be interpreted as not precluding national legislation which excludes the possibility of discharging a statutorily imposed payment obligation in banknotes denominated in euro, provided (i) that that legislation does not have the object or effect of establishing legal rules governing the status of legal tender of such banknotes; (ii) that it does not lead, in law or in fact, to abolition of those banknotes, in particular by calling into question the possibility, as a general rule, of discharging a payment obligation in cash; (iii) that it has been adopted for reasons of public interest; (iv) that the limitation on payments in cash which the legislation entails is appropriate for attaining the public interest objective pursued; and (v) that it does not go beyond what is necessary in order to achieve that objective, in that other lawful means of discharging the payment obligation are available.

### Costs

79 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. Article 2(1) TFEU, read in conjunction with Article 3(1)(c), Article 128(1) and Article 133 TFEU, and with 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, must be interpreted as meaning that, irrespective of any exercise by the European Union of its exclusive competence in the area of monetary policy for the Member States whose currency is the euro, it precludes a Member State from adopting a provision which, in the light of its objective and its content, establishes legal rules governing the status of legal tender of euro banknotes. It does not, however, preclude a Member State from adopting, in the exercise of a competence that is the Member State's own, such as the organisation of its public administration, a provision which requires that administration to accept payment in cash for the pecuniary obligations imposed by the administration.**
- 2. The third sentence of Article 128(1) TFEU, 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 the second sentence of Article 10 of Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro must be interpreted as not precluding national legislation which excludes the possibility of discharging a statutorily imposed payment obligation in banknotes denominated in euro, provided (i) that that legislation does not have the object or effect of establishing legal rules governing the status of legal tender of such banknotes; (ii) that it does not lead, in law or in fact, to abolition of those banknotes, in particular by calling into question the possibility, as a general rule, of discharging a payment obligation in cash; (iii) that it has been adopted for reasons of public interest; (iv) that the limitation on payments in cash which the legislation entails is appropriate for attaining the public interest objective pursued; and (v) that it does not go beyond what is necessary in order to achieve that objective, in that other lawful means of discharging the payment obligation are available.**

[Signatures]

\* Language of the case: German.