

EU MONEY LAW JEAN MONNET CHAIR

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Pending ECJ Case: C-422/19 and C-423/19. The dispute at national level



- Joined case: the facts and the legal arguments are essentially similar
- Applicants: Mr Dietrich and Mr Häring, owners of a residential property located in one of the German *Land*
- Defendant: A federal Land broadcasting organization governed by public law

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- Art. 14, para 1, the Law on the German Bundesbank
- *Without prejudice to Article 128 (1) of the Treaty on the Functioning of the European Union, the Deutsche Bundesbank shall have the sole right to issue banknotes in the area in which this Act is law. **Banknotes denominated in euro shall be the sole unrestricted legal tender.** The Deutsche Bundesbank shall announce publicly the denominations and distinguishing features of the banknotes it issues.*

Pending ECJ Case: C-422/19 and C-423/19. The dispute at national level



- **Art. 128, para 1, TFEU**
- *The European Central Bank shall have the exclusive right to authorise the issue of euro banknotes within the Union. The European Central Bank and the national central banks may issue such notes. **The banknotes issued by the European Central Bank and the national central banks shall be the only such notes to have the status of legal tender within the Union.***

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Referring Court:

- Federal Law (Law on the German Bundesbank) takes over the *Land* Law;
- Art. 14, para 1, Law on the German Bundesbank, is to be applied also to mass procedures.
- No data proving an increase in the organization costs and the final retail fee: a possible situation to be accepted.

Pending ECJ Case: C-422/19 and C-423/19. Preliminary Questions.



FIRST QUESTION

- Does art. 14, para 1, Law on the German Bundesbank comply with the European Union competence in the area of monetary policy?
- Art 2 and 3 TFEU
- No legislative definition of monetary policy at the EU level
- Art. 128 and Art. 133 TFEU

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- **Art. 133 TFEU**
- Without prejudice to the powers of the European Central Bank, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall lay down the measures necessary for the use of the euro as the single currency. Such measures shall be adopted after consultation of the European Central Bank.

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SECOND QUESTION

- Does the European substantive law contain a provision precluding public national authorities from refusing the discharging of monetary obligation imposed (by the law) by means of euro banknotes?
- Art. 128 TFEU
- Art. 10, Reg. 974/1998: **‘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’**

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SECOND QUESTION

Commission Recommendation of 22 March 2010 on the scope and effects of legal tender of euro banknotes and coins

- “The legal tender of euro banknotes should imply....
Mandatory acceptance - **Acceptance at full value face** -
Power to discharge from payment obligations
- ‘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).

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THIRD QUESTION

- The referring court asks whether a legal act of a Member State joining the Eurozone, may be adopted in the field of monetary policy as far as the Union has not made use yet of its exclusive competence?

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- Lisbon Treaty and allocation system of competence between the MSs and the Union
- Art. 3 TFEU: the MSs immediately lose their regulatory competence. No step backwards it may be made unless it is established by primary law. «irreversible» loss! How about the boundaries of MS competences?
- No definition of «monetary policy» – broad or strict concept within the EU framework?
- Art. 119(2) TFEU, Art. 128 TFEU and Art. 133 TFEU.

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- **Legal currency:** only banknotes and coins? also non-physical «currencies»? Only non physical «currencies»?
- Definition of funds – PSDs
- State-based limitation to the use of cash in compliance with the principle of proportionality and taking into account the goal of social inclusion
- The euro banknotes and coins must be accepted as a means of discharging monetary obligations, unless a different agreement is made between the contracting parties.

‘Electronification’



- Boundaries of «monetary policy» = ECJ case law between the 70s and the 80s
- 2010 Commission Recommendation: is it enough?
- Money as a means of payment – constitutional project based the «stakeholders» creation action (Desan) – harmonisation process based on the electronification process based on secondary rules and justified in the construction of an «internal market» for payments.