[DE] Federal Administrative Court submits questions to CJEU about broadcasting contribution payment methods

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On 27 March 2019, following applications from two people who are required to pay the German broadcasting contribution (cases BVerwG 6 C 5.18 and 6 C 6.18), the Bundesverwaltungsgericht (Federal Administrative Court - BVerwG) decided that the Court of Justice of the European Union (CJEU) should rule on whether the broadcasting contribution can and should be payable in cash. The decision primarily concerns the interpretation of the concept of legal tender and the scope of the European Union's exclusive jurisdiction over monetary policy.

In Germany, the obligation for private individuals to pay the broadcasting contribution, through which public broadcasting is largely financed and which currently stands at EUR 17.50 per month, is based on the ownership of a residence. Whereas the level of the financial contribution is fixed by the broadcasting authorities, it is collected by the ARD ZDF Deutschlandradio Beitragsservice and, according to the Rundfunkbeitragssatzung (broadcasting contribution regulations), can only be paid by standing order or direct debit, either through regular or one-off payments. In the main proceedings, two people who were required to pay the contribution complained about this situation, among other things, and asked the court to declare that they were entitled to pay it in cash. They had argued that since, under German and European law, euro banknotes were the only unrestricted legal tender, it should be possible to pay the broadcasting contribution in this way. However, their complaints and subsequent appeals had all been rejected, primarily on the grounds that, as far as mass tax collection procedures were concerned, there was no unconditional obligation to accept cash payments because, for reasons of simplicity and practicality, it was appropriate to authorise a fully cashless payment system. Moreover, people paying the contribution had the possibility of making a cash payment to the ARD/ZDF/Deutschlandradio account at a bank.

However, the BVerwG suspended the latest appeal proceedings launched by the complainants because it thought the decision depended largely on the interpretation of EU law. It therefore submitted the following questions to the CJEU:

1) Is the exclusive competence in the field of monetary policy for the member states whose currency is the euro, held by the Union under Article 2(1) in conjunction with Article 3(1)(c) of the Treaty on the Functioning of the European

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Union (TFEU), compatible with a legal act adopted in a member state obliging public authorities of that member state to accept legally required payments in euro banknotes?

2) Does the status of euro banknotes as legal tender, enshrined in the third sentence of Article 128(1) TFEU, the third sentence of Article 16(1) of Protocol (No. 4) on the Statute of the European System of Central Banks and of the European Central Bank and in the second sentence of Article 10 of Council Regulation (EC) No. 974/98 of 3 May 1998 on the introduction of the euro, prevent public authorities of a member state from refusing to accept such banknotes as payment for legally imposed charges, or does EU law provide scope for regulations prohibiting the use of euro banknotes for the payment of certain legally imposed charges?

3) If the answer to question 1 is yes and the answer to question 2 is no: can a legal act in the field of monetary policy, for which the Union has exclusive competence, adopted in a member state whose currency is the euro, be applied if the Union has not exercised its competence?

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