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## CASH AND THE FUTURE OF EURO BANKNOTES AT THE EUROPEAN COURT OF JUSTICE

MARTINA HORAKOVA

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A case currently making its way through Europe's top court (ECJ) could potentially have major implications for the future of cash in the region.

The hearings, which took place in mid-June, related to a legal challenge against the Hessischer Rundfunk, the German public broadcaster, which is accused of not accepting payments for an obligatory fee in euro cash. This refusal of cash to settle payment, the plaintiffs argue, is a violation of the status of euro banknotes and coins as legal tender.

The action is led by Norbert Haering, a *Handesblatt* journalist and pro-cash activist, whose lawyer opened with the

plea "save the euro, preserve him the paper!". The plaintiffs were the European Central Bank (ECB) and the European Commission (EC), while the defendant was joined by representatives of the German and French government.

The case was brought to the ECJ by a referral from the German Federal Administrative Court (BVerwG), who found<sup>1</sup> that "the exclusion of the possibility of paying broadcasting fees with euro banknotes violates the federal law (Bundesbank Act) and that German public authorities are obliged to accept euro banknotes." The BVerwG further found that "exceptions cannot be based on practical administrative reasons or cost savings, and require an authorisation by a federal law."

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**THE HESSISCHER  
RUNDFUNK (AND THE  
GERMAN AND  
FRENCH  
GOVERNMENTS)  
ARGUE THAT THE  
TERM LEGAL TENDER,  
AS DEFINED BY THE  
TREATY ON THE  
FUNCTIONING OF THE  
EUROPEAN UNION  
(TFEU), SIMPLY  
STIPULATES THAT  
THE EURO IS THE  
ONLY ACCEPTED  
CURRENCY WITHIN  
THE EUROZONE,  
WITHOUT  
SPECIFYING ITS  
IMPLICATION ON  
CASH ACCEPTANCE.**  
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**HOWEVER, GERMAN  
LAW ON LEGAL  
TENDER EXPLICITLY  
DEFINES EURO  
BANKNOTES AS A  
METHOD OF  
PAYMENT.**  
”

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However, the BVerwG deferred a ruling on the case pending receipt of a preliminary ruling from the ECJ, on the three questions<sup>2</sup>:

- 1) Given the EU's exclusive competence for monetary policy, is a euro member state entitled to oblige national public authorities to accept euro banknotes in the fulfilment of mandatory payment obligations?
- 2) Does the legal tender status of euro banknotes make it mandatory for Member States' public authorities to accept euro banknotes as a discharge of obligatory payments? Or can a Member State's public authority, under certain conditions, refrain from accepting euro cash for such payment obligations?
- 3) If, as a consequence of the legal tender status of euro banknotes, Member States' public authorities have to accept euro banknotes as a discharge of mandatory payment obligations, can a Eurozone Member State nevertheless apply national law as long as the EU has not made use of its transferred competence?

The subsequent discussions and arguments evolved around two key questions which, based on the ECJ's ruling which is due to be made on 29 September, could set significant precedents for the future of cash:

Firstly, what is the legal meaning of the term 'legal tender' and does it impose a binding obligation on public authorities in the euro member states to accept cash?

Secondly, does the authorisation to issue euro cash constitute a part of ECB's monetary policy?

### **Legal Tender**

Differences of opinion as to what is meant by 'legal tender' in large part stem from differences in how European and German national law define euro currency banknotes. The Hessischer Rundfunk (and the German and the French governments) argue that the term legal tender, as defined by the Treaty

on the Functioning of the European Union (TFEU), simply stipulates that the euro is the only accepted currency within the Eurozone, without specifying its implication on cash acceptance. Article 128, Paragraph 1 of the Treaty states: "The European Central Bank shall have the exclusive right to authorise the issue of banknotes within the Union. [...] 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." The defendant argues that because the TFEU does not refer to the euro in the form of physical money, it is therefore not the only legal means of payment.

However, German law on legal tender explicitly defines euro banknotes as a method of payment: "Euro banknotes are the sole unrestricted legal means of payment."<sup>3</sup> It is this discrepancy that causes the BVerwG to refer for judgment to the ECJ.

The EC representative in the case argues that legal tender implies an obligation to accept cash for debt payments, adding that the ability to pay cash is a fundamental right and economic freedom of citizens. The EC further elaborates that although citizens can choose to opt out via private contracted agreements, public authorities cannot refuse mandatory payments in cash.

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**The ability to pay cash is argued to be a fundamental right and economic freedom of citizens.**

The ECB also struck a defiant tone on the integrity of cash as legal tender when in 2018 an Executive Board Member stated “the ECB is also responsible in particular for protecting the status of euro cash as the sole legal tender. This includes guaranteeing the existence of euro cash and its usability as legal tender. In fulfilling these tasks, the ECB ultimately ensures that people can go about their lives, with their fundamental rights protected, using euro banknotes and coins.”<sup>4</sup>

In their arguments, representatives of the EC and the ECB explained that whilst restrictions and limits on cash usage can be imposed, for instance for anti-money laundering, such restrictions must have a legitimate purpose and to that end be proportionate, suitable, necessary and adequate in regards to the achievement of the public objectives. Eurozone Member States are expected to request the ECB’s opinion on any legislative proposals on limits to cash.

There is currently legal uncertainty at the euro area level with regards to a common interpretation and definition of legal tender, what it means and if and how it must be protected. It should be noted that the difficulties with the modern interpretation of legal tender are not just applicable to Eurozone countries; indeed this is an increasingly widespread problem for many countries around the world. What is clear is that past definitions of legal tender – written at a time when the potential demise of cash and the all-encompassing rise of electronic payments made for a good sci-fi script – have not adapted to the present set of challenges.

In this vein, Sveriges Riksbank, Sweden’s central bank, is observing a decline of cash in transactional use, as well as demand for currency from 2007 (although this trend has been reversed



**The practical usability of the Euro underpins the Eurozone citizens' trust in it - as manifested by hoarding behaviour observed during the pandemic crisis. This trust is in itself one of the goals of of the ECB.**

since 2018). The central bank is calling on Swedish legislators to amend the term legal tender, requesting that it “be strengthened further, also under normal circumstances, and mandatory requirements to be placed on at least some business operators.”<sup>5</sup>

### Cash as Part of Monetary Policy

The German and the French governments argued that euro issuance was not part of the ECB’s monetary policy mandate, as it is not necessary to achieve price stability and is not a listed monetary policy instrument as such. France went so far as to argue that euro cash has no impact on liquidity in the Eurozone and hence no effect on monetary policy given its marginal proportion in the overall money supply.

The ECB disagreed, and corrected the French representative that euro cash in circulation is in fact part of money aggregates and therefore far from irrelevant for monetary policy.



**It has been argued that refusing cash payments is more practical and economic. However, this cannot be the basis for a public authority to limit the use of cash.**

Furthermore, citizens’ trust in the euro is crucial for monetary policy and the ECB’s ability to deliver its price stability mandate. Trust in the euro is an ECB goal in itself and the euro banknotes are “the printed trust in the euro.” It is the only payment means settled instantaneously, at face value and the only central bank money available to all citizens. The ECB goes to great lengths and logistical efforts to secure cash provisions and to make euro cash available for citizens “in all circumstances.”

The achieved trust of the Eurozone citizens in the euro has been clearly manifested through the “record high demand rise” during the Covid-19 crisis, despite the rise of contactless payments. The “practical usability” of the euro, its acceptance and availability, “underpins and embodies” this trust. Why would citizens hoard cash as a store of value if they didn’t trust that they can also use it? The ECB is here to guarantee this.

### The Cost of Cash

In their rebuttal, the Hessischer Rundfunk argued that the decision not to accept cash payments is based on practical administrative and economically cost-effective considerations. Both the EC and the ECB stressed however that a public authority cannot limit the use of cash on the basis of cost efficiency.

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Furthermore, the ECB added that according to its studies and statistics euro cash is in fact a very cost-efficient payment method. Indeed, it would be an interesting exercise should the ECJ judges request the Hessischer Rundfunk to present their cost calculations of various means of payments.

The EC representative argued that legal tender implies that no additional cost can be incurred by the payee. This is a very critical point which is likely to affect broader payment strategy for some time to come, should the definition of legal tender remain unchanged. However, for those who do not own a bank account, Rundfunk's insistence on non-cash payments makes bank

transfers very costly. In fact, this represents an imposed tax for those who do not own a bank account and are forced by the public authority to incur the cost.

### Future of Cash

In a follow-up question about cashless society, the ECB confirmed that cash is crucial for vulnerable groups in society and is fundamental for their inclusion in a functioning society. The ECB representative further wondered about who actually wants "this transition to cashless society", questioning whether they are lobby groups of electronic payments start-ups who collect transaction fees, or simply a lower demand for cash payments by citizens?

An ECB Board Member also asserted in a 2018 speech, mentioned above, that "alternative payment methods cannot replace euro cash; they can only complement it. The Eurosystem must therefore continue to ensure the existence of euro cash. This is the only way we can safeguard the role that euro banknotes and coins play in protecting the fundamental rights and freedoms of the people of Europe."

### Watch this space

A final ruling on the case is expected in the autumn. Depending on the outcome, Eurozone member states and their public authorities may find themselves collecting taxes in cash, giving the cash network system a much-welcomed boost.

1. BVerwG, Beschluss vom 27.03.2019 - 6 C 6.18 [ECLI:DE:BVerwG:2019:270319B6C6.18.0] <https://www.bverwg.de/de/270319B6C6.18.0>
2. Request for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 31 May 2019 — Johannes Dietrich v Hessischer Rundfunk <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62019CN0422>
3. "Auf Euro lautende Banknoten sind das einzige unbeschränkte gesetzliche Zahlungsmittel." Gesetz über die Deutsche Bundesbank <https://www.bundesbank.de/resource/blob/598136/dcaaa3edf096b057757746ac446dd311/mL/gesetz-ueber-die-deutsche-bundesbank-data.pdf>
4. "The role of euro banknotes as legal tender" Speech by Yves Mersch, Member of the Executive Board of the ECB, at the 4th Bargeldsymposium of the Deutsche Bundesbank, Frankfurt am Main, 14 February 2018 <https://www.ecb.europa.eu/press/key/date/2018/html/ecb.sp180214.en.html#:~:text=As%20the%20central%20bank%20which,its%20usability%20as%20legal%20tender>
5. Sveriges Riksbank (December 2019): "Separate statement of opinion by Christina Wejshammar" <https://www.riksbank.se/globalassets/media/ovrigt/sarskilda-yttanden-191204/separate-statement-of-opinion-by-christina-wejshammar.pdf>

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# PRESERVING THE AMERICAN PEOPLE'S RIGHT TO PAY WITH CASH

TAN JIT KENT



For much of modern history, America has been ground zero for many a battle of ideas. It is no different today, with the economic and cultural behemoth facing intense internal conflict on issues ranging from pandemic management to race relations and equitable socio-economic reform. Much of the discourse has been politically charged as it always is, but more so with the United States Presidential Election looming on the horizon. It is therefore refreshing to see recent bipartisan solidarity in support of one of America's most cherished values – the preservation of its citizens' rights – via the Payment Choice Act of 2019 (H.R. 2650).



**The Payment Choice Act of 2019 has received support on both sides of the political divide and would serve to uphold the freedom of US citizens.**

Introduced on the 9th of May 2019, the Payment Choice Act of 2019 is a bipartisan bill co-sponsored by both Democrats and Republicans which, upon enactment, would maintain nationwide acceptance of cash payments for consumer purchases of goods and services at brick-and-mortar retail outlets. It would also prohibit the charging of higher prices for customers paying with cash vs other modes of payment. The bill was introduced in light of a number of retail establishments across the nation having developed cashless policies, declaring that they refuse to accept United States cash payment from their customers – and requiring instead that payment be made only with credit cards, debit cards, or digital payment methods.

In support of the sentiment behind this bill, dubbed the Payne bill after Rep. Donald M. Payne Jr. (D-NJ) who introduced it, the Consumer Choice in Payment Coalition (CCPC) was established in May 2020. Comprising a broad spectrum of consumer representatives and businesses, this coalition serves to advocate for the continued availability of cash as a payment option for consumers throughout the United States. Notable members of the coalition include consumer advocacy groups such as the Consumer Federation of America and Consumer Action; manufacturers of cash-handling and processing hardware such as Hyosung USA, Genmega, Triton Systems,

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**THE PAYMENT CHOICE ACT OF 2019 IS A BIPARTISAN BILL CO-SPONSORED BY BOTH DEMOCRATS AND REPUBLICANS WHICH, UPON ENACTMENT, WOULD MAINTAIN NATIONWIDE ACCEPTANCE OF CASH PAYMENTS FOR CONSUMER PURCHASES OF GOODS AND SERVICES AT BRICK-AND-MORTAR RETAIL OUTLETS.**  
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During natural disasters like flooding and earthquakes, the cash payment option is needed more than ever. CCPC seeks to protect that option.

“ IN THIS DEFENCE OF CASH, NO ATTEMPT IS BEING MADE TO SUPPRESS THE CASHLESS OPTION. BUSINESSES OFFERING CASHLESS PAYMENTS REMAIN FREE TO DO SO AT NO ADDITIONAL COST, WHILE CONSUMERS WHO OPT FOR CASHLESS MAY ALSO DO SO AT THEIR OWN DISCRETION. ”

and Diebold Nixdorf; and national trade associations including The National ATM Council, Inc. (NAC), the National Armored Car Association (NACA), the Independent Armored Car Operators Association (IACOA), the Secure Cash & Transport Association (SCTA), The Amusement & Music Operators Association (AMOA), and Financial Service Centers of America (FISCA).

By advocating for the passage of the Payne bill, CCPC seeks to preserve the cash payment option not only to safeguard vulnerable populations and those impacted by natural disasters or emergencies, but also the privacy and personal freedoms of Americans in general. Cash is unique among all the available payment options in that it offers its users invaluable privacy for their individual spending decisions and purchasing data. This privacy is becoming ever scarcer by the day as data-driven marketing grows not only more pervasive but increasingly intrusive. Additionally, the risk for consumers manifests itself is much more than just an inconvenient invasion of privacy – the capture, storage, and exchange of consumer data puts the consumers themselves at risk of identity theft and subsequent financial loss.

From a consumer rights perspective, CCPC and the Payne bill look to be upholding a just and essential cause. While electronic payments are for the most part efficient, convenient, and reasonably secure, they do come with unique shortcomings by



The privacy conferred by cash is becoming ever more precious as data-driven marketing captures more consumer data day by day.

which cash is not encumbered. It is only reasonable to conclude that both options must be made available for the consumer. CCPC is not alone in coming to this conclusion – in recent times the preservation of a cash payment option has started to garner public support within the United States. Within the past two years for instance, the state of New Jersey and major cities including Philadelphia and San Francisco have enacted similar laws to maintain cash payments.

It is important to note that in this defense of cash, no attempt is being made to suppress the cashless option. Businesses offering cashless payment options remain free to do so at no additional cost, while consumers who opt for cashless payments may also do so at their own discretion. It would appear that this move, if successfully executed, spells out a much needed win for the American people and their right to a freedom of choice.

#### Further Reading

1. Consumer Choice in Payment Coalition. National Coalition Formed to Protect Cash Payment Option for U.S. Consumers. PR Newswire. 7 May 2020. Available from: <https://www.prnewswire.com/news-releases/national-coalition-formed-to-protect-cash-payment-option-for-us-consumers-301054967.html>
2. Consumer Choice in Payment Coalition official website: <https://www.cash-choice.org/>
3. More about H.R.2650 - Payment Choice Act of 2019: <https://www.congress.gov/bill/116th-congress/house-bill/2650/text>

# MEMBERS' NEWSBOARD - LATEST STORIES FROM ACMA MEMBERS

## JCM GLOBAL AND CASH PROCESSING SOLUTIONS ENTER INTO PARTNERSHIP TO BRING COMPLETE CASH HANDLING SOLUTIONS TO CASINOS

CPS

JCM Global® has selected Cash Processing Solutions (CPS) as their partner of choice. JCM and CPS executed a master distributor agreement which enables JCM to supply advanced high-speed count/sort equipment and cash management software in North America. This partnership is the latest example of how CPS continues to expand their product offerings to benefit its customers. JCM will represent CPS's software solution, ECM™ Edge, as well as its banknote sorting machines.

"Combined, JCM and CPS have more than 125 years of experience in cash



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management solutions. Bringing this level of experience and integrating our technology portfolios together benefits JCM's customers, allowing them to capitalize on the combined strengths of JCM and CPS, to save time, save money, and gain greater insights into their overall cash management operations," said JCM SVP Operations, Sales & Marketing Dave Kubajak.

"CPS is delighted to partner with JCM. This partnership is the result of JCM's recognition of CPS' investment in the multi-year development of its new software and hardware product solutions for the casino count room as well as its expertise globally in supplying Cash Processing Solutions for the Banking sector" said Darren Wick, Managing Director Americas for CPS.

To learn more, please view the full story on the ACMA website, [here](#).

## IN AN ERA OF EFFICIENCY, AUTOMATION IS THE ONLY WAY FORWARD

G+D

Intelligent automation solutions increase efficiency both within cash centres and in logistics and transportation across the cash cycle. Standardization and integration with software ensures that processes are optimized, now and in the future.

Globally, cash in circulation continues to increase. However, according to the World Payments Report 2019, cash payments' share of total volume is declining in many countries. This highlights the need for the cash cycle to innovate and reduce the overall cost of cash in order to remain competitive and ensure that societies continue to use this secure, reliable, and inclusive form of payment.



**Automated solutions could increase productivity and efficiency to help maintain the viability and relevance of cash.**

A study by McKinsey, "Attacking the cost of cash," identified high manual labour in the distribution and processing of cash as one of the major contributors

to its rising cost. To cut the cost of cash operations, the article recommends streamlining cash handling processes, applying software and analytical tools to better forecast fluctuations, reducing the number of trips needed for cash transportation, and encouraging greater cooperation between players. One of the most effective ways to realize these goals is to apply lean principles and increase automation in cash centres. Automation enables cash processing operations to become significantly more efficient by facilitating constantly productive, error-proof operations and eradicating time-consuming manual steps.

To learn more, please view the full story on the ACMA website, [here](#).

## PERCEPTIONS, INNOVATIONS, AND CASH IN THE NEXT NORMAL GLORY

**B**ad news travels fast. And in the case of the World Health Organization's supposed statement about Covid-19 and cash, arguably faster than the virus itself. The impact of global coverage of the mis-quote continues to have a dramatic impact on our industry. Consumers have moved from the tacit understanding that "cash is dirty" to the widespread belief that "cash is dangerous". Retailers around the world have pushed customers to use card or contactless payments with even the smallest retailers and SMB's taking up discounted offers for wireless card readers from Square, iZettle, Sumup and others.



**Contactless payments were broadly taken up in the wake of the current pandemic. However, cash recycling technology could also mitigate virus transmission risks whilst making purchases with cash.**

In many ways this shift is understandable – we all want to minimise our risk in the face of the virus. There is, however, a broader societal concern. For many people around the world, even in developed economies, cash is their only

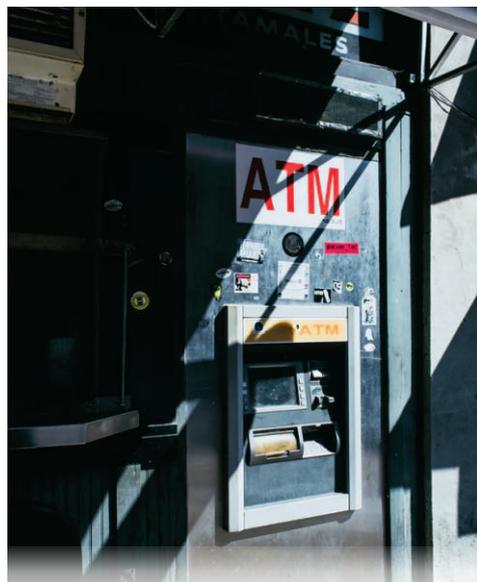
payment option and for many more it remains a strong preference, often for budgeting reasons. Until we can reverse the impact of the virus on employment numbers and economies, the number of people relying on cash to manage their household finances is likely to increase significantly.

It is against this backdrop that Glory recently launched our Contactless Cash Payment campaign demonstrating how cash recycling technology at the point of sale enables physical distancing between cashier and customer..

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To learn more, please view the full story on the ACMA website, [here](#).

## ATM HOOD/TOP COMPARTMENT SECURITY SARGENT & GREENLEAF



**Most ATMs are vulnerable to digital attacks as their computer components, located in the machine hood, are minimally protected.**

**A**s ATM security went digital, the computer interfaces that added convenience to 24/7 banking left many machines vulnerable. Attackers, who couldn't physically disarm an ATM vault lock, use jackpotting techniques — gaining access to the ATM by hacking the computer portal of the machine — to bypass ATM security entirely.

### How does jackpotting work?

Hackers install malware on the ATM, which allows them to either open the safe or cause the ATM to dispense large sums of cash. Jackpotting attacks don't need to compromise the ATM vault lock, because they work through the vulnerabilities in the computer at the ATM hood.

### Why are ATMs vulnerable to jackpotting?

Most of the 3.24 million ATMs deployed worldwide use minimally protected computer components and software in their customer interfaces located in the top, or hood, of the machine above the vault where money is stored. Hackers can gain access remotely or at the ATM itself, depending on how the machine is networked and designed. While most ATMs have high-security vault locks, the vast majority remain vulnerable through the ATM's hood.

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To learn more, please view the full story on the ACMA website, [here](#).

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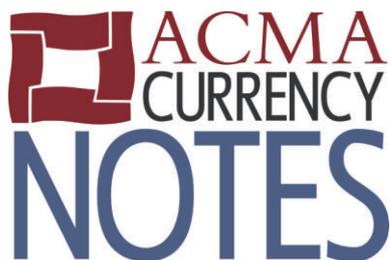
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To provide a platform for Cash Management Companies (CMCs) in Asia, Africa and Australia & Oceania to raise their professional reputation and standing in the Cash Handling and Cash Management Industry, and to act as a representative with the appropriate authorities on issues of common interest.

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