

## Yves Mersch: The role of euro banknotes as legal tender

Speech by Mr Yves Mersch, Member of the Executive Board of the European Central Bank, at the 4th Bargeldsymposium of the Deutsche Bundesbank, Frankfurt am Main, 14 February 2018.

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First of all, I would like to thank the Deutsche Bundesbank organisers for inviting me to speak at this symposium. The particularly good cooperation between the various Eurosystem central banks in the field of cash is not only part of our core business. It also serves the people of Europe, for whom euro cash has an important function. But our cash has recently come in for greater criticism.

- ♦ Last year alone, five Member States<sup>1</sup> consulted the ECB on measures to limit the use of cash. This represents a sharp increase compared with the number of consultations on this topic in previous years.
- ♦ Opposition to cash is coming from different quarters. On the one hand, the “law and order” school says that criminals use cash to finance their illegal activities. Others, meanwhile, who have developed business models involving new electronic payment methods, point to the “cost” of cash. We have to address these arguments.

In the next few minutes, I would like to consider the following questions:

- ♦ Why does the Treaty<sup>2</sup> grant (privileged) legal tender status to euro banknotes? In other words, why is there legal tender status at all?
- ♦ What is the role of the ECB and the Eurosystem in protecting this status? And what implications does this have for our activities in the Eurosystem?

Euro banknotes, and only euro banknotes, are protected as legal tender under the primary law of Article 128(1) TFEU<sup>3</sup>. But what exactly is legal tender?

There is a Commission recommendation on this point<sup>4</sup>. It is not binding. But it does provide for the following key elements:

- ♦ mandatory acceptance (unless explicitly agreed otherwise)
- ♦ legally recognised means for repaying a debt, i.e. with a discharging effect
- ♦ at face value, with no levying of additional fees permitted (as is the case, for example, with credit cards).

Precisely what else can be deduced from the legal tender status is a question of interpretation: the Treaty and the binding secondary legislation do not define the content of the legal tender status. The national arrangements of the 19 Member States of the euro area relating to the legal tender status which predate the introduction of the euro continue to apply. In practice, they determine the concrete effects of the legal tender<sup>5</sup> in daily payment transactions. This includes restrictions on the use of the legal tender by way of national regulatory arrangements. Such restrictions can certainly vary from one Member State to another, but the legal tender status as such, so to speak the “nature” of our banknotes, including the core elements of this status mentioned before, must be preserved. We monitor this. I’ll come back to this shortly.

### Why does legal tender status exist at all?

The relevant provision in the Treaty<sup>6</sup> does not itself constitute a fundamental right or is not equivalent to a fundamental right (in any case not according to prevailing opinion). So there is no “right to cash” or “right to cash payment in all cases”. But the granting of legal tender status to

euro banknotes under the TFEU, and thus at constitutional level, does concern fundamental rights and fulfils at the same time an important institutional function. Euro banknotes do not exist “for their own sake” or to allow us central banks to obtain seigniorage, but for reasons that are protected under constitutional law.

### **Cash as legal tender facilitates freedom**

Cash, as a medium of transaction in many instances, opens the way for the exercise of many fundamental rights – it costs money to live and money has to be earned. Cash allows privacy and thus safeguards fundamental rights, such as the right to “informational self-determination”, freedom of action and freedom of speech. Citizens can use cash to exercise their fundamental rights without the state or other third parties being able to immediately track any financial transactions involved.

This aspect is particularly relevant considering the criticism I mentioned before that cash-facilitated privacy aids and abets criminal activities. Protection of privacy matters to all of us. Privacy protects people from the risk of a surveillance state and thought police. No particular link can be established statistically between cash and criminal activities. The focus must be on the fight against crime. Cash must not be made the scapegoat. It’s astonishing that alternative means of payment, such as bitcoin – very popular among cybercriminals – are subject to much less criticism than cash despite the risks they entail and the scope for misuse.

### **Cash as legal tender allows equality and participation**

The store-of-value function of cash is directly linked to property rights.<sup>7</sup>

The easy accessibility to cash, especially for the elderly, the socially vulnerable or minors, allows people to participate in society and, for example, allows children to learn how to handle money. In particular, when socially vulnerable people use cash, they face none of the barriers involved in applying for a credit card or, despite all their efforts, opening a current account.

### **Cash as legal tender provides security and protection**

Cash “always works”. If alternative means of payment are no longer possible, e.g. because of a power or network failure, society can continue to function because of cash – in any case as long as the ATMs work or we manage, for example, in times of crisis to replace this infrastructure unbureaucratically. Cash thus clearly enhances the resilience of society and ensures its functioning particularly in critical periods.

Many people use cash to buy everyday items, but not to pay larger sums. They cleverly weigh up the risks, burdens and benefits, such as protecting their privacy by making anonymous cash payments. The statistics show that “average” Europeans have about €1,600 net at their disposal every month. Once rent and other fixed costs have been deducted, many people evidently carry out “cash-suitable” transactions above all. Of course, “shoe leather costs” play an important role in people’s calculations, such as the distance from an ATM or the acceptance of euro cash abroad. People who frequently have to handle large sums of money or who, for business or private reasons, often (have to) stay in other currency areas may find it practical to make their payments with a card and not to have to go first to an ATM or a bureau de change. But that certainly doesn’t mean that these people – especially here in Germany – would be willing to give up their cash.

### **What is the role of the ECB and the Eurosystem in protecting the legal tender?**

The ECB, as the European institution at the heart of the Eurosystem, has a particular role to play, and not just in terms of monetary policy in general. As the central bank which authorises the issuance of euro banknotes,<sup>8</sup> 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.

The ECB establishes the legal framework that protects euro banknotes, for example. We decide what types of reproduction are permitted<sup>9</sup> and, together with the national central banks, clamp down on unauthorised reproductions<sup>10</sup>. This helps to preserve public confidence in euro cash. We keep a constant eye on costs, in terms of regulation too, to ensure that the provision of cash remains cost-effective. Here we have an obligation to the public to increase efficiency even further.

We ensure that cash retains its scope for use and we take action if the legal tender status is at risk.

In the legislative field, our efforts to protect and safeguard the currency mainly take the form of ECB opinions on legislative proposals at national or EU level which relate to our tasks. The ECB has to be consulted on all such legislative proposals,<sup>11</sup> especially when they have the effect of limiting the legal tender status of euro banknotes.

Until 2016, these consultations by Member States on limiting the use of cash were a routine exercise. From the first consultations the ECB established the position<sup>12</sup> that national measures in this area must:

- ♦ have a legitimate purpose and to that end
- ♦ be proportionate, that is
- ♦ suitable, necessary and adequate.

“Suitable” in this case means that the planned legislative measures will actually be able to achieve their aim, i.e. that they are efficient and effective. On the basis of this position, the ECB has recognised, in particular, the fight against money laundering, terrorist financing and tax evasion as legitimate purposes. There has been no criticism when Member States have planned proportionate measures to address these issues.

Since around 2016, and with the peak I mentioned in 2017, the ECB, with increasing regularity, has had to address in detail the topic of limits to cash payments. We have maintained a consistent position on this and, for the first time, we found ourselves having to comment on measures that were not suitable.

These measures involved limiting the use of cash for transactions that are not subject to tax. The national legislator had justified the measures on the grounds that they would help prevent tax evasion. However, limits on non-taxable payments do not help to combat tax evasion<sup>13</sup>. With due respect for the prerogative of the legislator to evaluate the matter, the ECB must point out such errors of assessment.

We also faced for the first time, in the context of a consultation on a very low proposed cash limit, the question of whether the legal tender status of a banknote is undermined if limits on cash payments make it impossible to use a certain denomination in transactions<sup>14</sup>. This would be tantamount to abolishing that denomination. But only the Governing Council of the ECB can make such decisions about the denominations of euro banknotes, and that includes the decision on whether to discontinue certain denominations. So there must be scope for all denominations of the legal tender to be used, otherwise this competence of the Governing Council would be undermined.

General, non-sector-specific limits on cash which largely preclude the use of a denomination are therefore likely to be very difficult to justify.

In this context, I would like to comment on our decision on the €500 banknote. We have decided not to issue a €500 banknote in the second series of euro banknotes. However, €500 banknotes from the first series – which some Europeans probably have under their mattresses – retain their status as legal tender. So people need not worry that their €500 banknotes will lose their value and can continue to use them as a means of payment.

Ultimately, the Treaty includes a limit to limits on cash by assigning legal tender status to the euro banknote denominations as determined by the Governing Council of the ECB. We at the ECB monitor compliance with this provision.

We would also intervene – but fortunately have not yet had to – if there were cases of discrimination against cash as legal tender compared with alternative private payment methods. This could happen, for example, if a payment fee were to be levied. You will recall that a core feature of legal tender is that banknotes must be accepted at their face value. Anyone who has paid by card when booking a flight is aware of the difference. In the case of card payments, additional payment fees are allowed and are standard practice.

### **Conclusion: What are the implications for our activities within the Eurosystem?**

I will conclude by saying that printed euro banknotes will retain their place and their role in society as legal tender for a very long time to come. There is no viable alternative to euro cash. There is good reason to believe that banknotes don't only have to take the form of printed paper, cotton or polymer. However, printed banknotes will remain our core business. And if there is public demand for digital central bank money, this should only be a technical variant of cash.

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.

Protecting the legal tender status of our banknotes will still call for a high level of vigilance from the ECB and the NCBs, in particular in order to prevent unwarranted limits and thereby ensure support for the euro and its existence. New legislative initiatives, such as those at EU level to define what constitutes legal tender, require intensive dialogue between the ECB and the legislators.

Thank you for your attention.

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<sup>1</sup> Cyprus, Bulgaria, Belgium, Portugal and Denmark.

<sup>2</sup> Treaty on the Functioning of the European Union, Article 128(1).

<sup>3</sup> Article 128(1) TFEU: “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 legal tender status of euro coins is only granted under secondary legislation (Article 11 Regulation EC/974/98); their existence is recognised by the Treaty (Article 128(2) TFEU), but it says nothing about their legal tender status.

<sup>4</sup> Recommendation 2010/191/EU.

<sup>5</sup> The European Commission states on its website: “...beyond the basic principles in the Treaty the various pre-euro national principles continue de facto to shape the concrete effects of the legal tender of the euro in the participating Member States”; see [ec.europa.eu/economy\\_finance/articles/euro/2010-03-22-legal-tender-euro\\_en.htm](http://ec.europa.eu/economy_finance/articles/euro/2010-03-22-legal-tender-euro_en.htm).

<sup>6</sup> Article 128(1) TFEU.

<sup>7</sup> This is even more developed in many Member States. For example, the Italian constitution (Article 47) even protects people's savings. Ultimately, the primary objective of monetary policy – ensuring stable prices – also serves the social objective of safeguarding the value of our currency and protecting people's savings from being devalued by excessive inflation.

<sup>8</sup> Article 128(1) TFEU.

<sup>9</sup> Article 2 of Decision ECB/2013/10.

<sup>10</sup> Guideline ECB/2003/5.

<sup>11</sup> Article 127(4) TFEU.

<sup>12</sup> The stricter position found in the legal literature – which denies Member States any competence to take measures that have a limiting effect, even if the focus of the measure lies elsewhere, since legislative measures limiting the legal tender status of euro cash can only be taken at EU level – was not followed.

<sup>13</sup> CON/2017/18 — Portugal, paragraphs 3.1 and CON/2017/27 — Bulgaria, paragraph 2.9.

<sup>14</sup> See CON/2017/27, Bulgaria, paragraph 2.11. The Bulgarian legislator followed the ECB's opinion and did not implement the too-low limit on cash payments.