EUROPEAN
COMMISSION

Brussels, 28.6.2023
COM(2023) 364 final

2023/0208 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the legal tender of euro banknotes and coins

{SEC(2023) 257 final} - {SWD(2023) 233 final} - {SWD(2023) 234 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The arrival of the euro as the single European currency was a major step forward in European integration. Euro cash is a dominant means of payment[1], as citizens and retailers use euro cash in daily transactions to make payments or give change in the euro area. Cash is the only means of payment that allows direct in-person payments, with immediate settlement and without involvement of any third party or use of electronic equipment.

The growth of electronic payments, a trend accelerated by COVID-19, has led to a general decline in cash payments and the reductionof automated teller machine (ATM) networks in a number of Member States means there are risks to access to cash. Thus, the issue of the scope and meaning of the legal tender status of cash has become more prominent in the EU policy agenda, as outlined in the Commission's Retail Payments Strategy and in view of the recent ruling of the Court of Justice of the European Union on the matter[2].

This ruling is significant because it sets out in the Court's jurisprudence the key aspects of the concept of legal tender, which until now have only been found in the Commission Recommendation of 22 March 2010 on the scope and effects of legal tender of euro banknotes and coins[3]. Although EU law directly attributes the status of legal tender to euro banknotes and coins, neither primary nor secondary EU law defines the concept of legal tender. In its judgment in the legal tender cases, the Court of Justice held that the concept of 'legal tender' of euro banknotes enshrined in Article 128(1) TFEU is a concept of Union law that must be given an autonomous and uniform interpretation throughout the European Union. The concept of legal tender as interpreted by the Court of Justice for euro banknotes implies: (i) mandatory acceptance, (ii) at full face value and (iii) with the effect of discharging payment obligations[4], as set out by Point 1 of the 2010 Commission Recommendation.

In order to preserve the effectiveness of the legal tender status of cash in practice, it is key to ensure the ease of access to euro cash, because if citizens do not have access to cash, they will not be able to pay with it and its effective legal tender status will be undermined.

Consequently, this proposal ensures that the physical form of central bank money, euro cash, remains present, available and accepted by all euro-area residents and enterprises.

• Consistency with existing policy provisions in the policy area

Other than the relevant provisions of the Treaties (Article 3(1)(c) TFEU and Articles 127 to 133 TFEU), article 11 of Regulation 974/98 on the introduction of the euro which grants legal tender status to euro coins[5], the Commission Recommendation of 2010 and the proposal for a Regulation of the European Parliament and of the Council on the establishment of the digital

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1 https://www.ecb.europa.eu/euro/cash_strategy/cash_role/html/index.en.html

2 See judgment of 26 January 2021 in Joined Cases C-422/19 and C-423/19, Dietrich and Häring (EU:C:2021:63).

3 Commission Recommendation of 22 March 2010 on the scope and effects of legal tender of euro banknotes and coins (2010/191/EU)

4 See judgment of 26 January 2021 in Joined Cases C-422/19 and C-423/19, Dietrich and Häring (EU:C:2021:63, paragraph 49).

5 Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro (OJ L139, 11.5.1998, p.1).

euro (adopted alongside the present proposal),[6] there are no policy provisions in the relevant policy area, i.e. monetary law as part of the monetary policy of the euro area.

The present proposal is consistent with those provisions of primary law. In particular, this proposal for a Regulation is consistent with the 2010 Commission Recommendation which outlined a common definition of the concept of legal tender. In order to ensure coherence between the two forms of central bank money (digital euro and euro cash), the digital euro will also be regulated in a consistent manner with the legal tender of cash, without prejudice to the differences between these forms of the euro. This proposal complements the proposal for a Regulation establishing the digital euro, as the digital euro should complement cash, not replace it. That is why the Commission is making a legislative proposal to ensure the acceptance and availability of cash.

Once adopted, the proposed Regulation will supersede the 2010 Commission Recommendation, which will become devoid of purpose. The Commission would then make clear that the Recommendation no longer applies.

- **Consistency with other Union policies**

This proposal is in line with other policies pursued at Union level. In particular, it is consistent with the Retail Payment Strategy of the Commission adopted in September 2020.

This proposal is also consistent with the European Accessibility Act, which covers ATMs, and with the Union's policy efforts to support social inclusion, including in the context of the European Pillar of Social Rights. It aims to ensure that everyone in the euro area has sufficient and effective access to cash. This is particularly relevant for vulnerable groups with a dependency on using cash for payments, which typically include older people, those with a disability who may have difficulty in accessing digital payments, people with limited digital skills and/or income. These groups tend to have a strong preference to use cash to settle their payments over electronic means of payments. Furthermore, financially excluded people, such as the unbanked, asylum seekers and migrants, who may not be able or willing to use means of payment supplied by the private sector, also rely on cash as their payment method. Moreover, evidence shows that the main reasons why cash is preferred are that (i) cash is considered to make one more aware of one's own expenses, and (ii) cash is perceived as anonymous (and therefore protects privacy)[7], whilst it has the unique feature of allowing for direct payments with immediate settlement without the need for a third party. In terms of preserving cash as a payment option, the 2022 ECB SPACE study[8] shows that 60% of consumers still considered the option to pay with cash to be important or very important. It confirms that ''despite the impact of the pandemic and related lockdown measures and self-reported preferences, an increasing share of euro area consumers would like to have cash as a payment option''[9].

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6 Commission Recommendation of 22 March 2010 on the scope and effects of legal tender of euro banknotes and coins (europa.eu)

7 European Central Bank (2022), Study on the payment attitudes of consumers in the euro area (SPACE) https://www.ecb.europa.eu/stats/ecb_surveys/space/html/ecb.spacereport202212~783ffdf46e.en.html#toc7

8 Study on the payment attitudes of consumers in the euro area (SPACE) – 2022 (europa.eu)

9 European Central Bank (2022), Study on the payment attitudes of consumers in the euro area (SPACE), p. 59 https://www.ecb.europa.eu/stats/ecb_surveys/space/html/ecb.spacereport202212~783ffdf46e.en.html#toc7

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

This proposal for a regulation is based on Article 133 TFEU, which provides for the adoption of measures, including monetary law measures, which are necessary for the use of the euro as the single currency. This Treaty provision 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.

• Subsidiarity

In accordance with Article 5(3) TEU, the principle of subsidiarity does not apply in areas which fall within the Union's exclusive competence. In accordance with Article 3(1)(c) TFEU, the EU has an exclusive competence in the area of monetary policy for the Member States whose currency is the euro. In this area, action by the euro area Member States is not possible and the principle of subsidiarity thus does not apply.

• Proportionality

Proportionality has been an integral part of the impact assessment accompanying the proposal. While the adoption of measures, where appropriate, to ensure the acceptance of cash or sufficient and effective access to cash may impose some burdens on the authorities responsible for taking them and on the parties responsible for implementing them, the measures do not go beyond what is necessary to guarantee the objectives of acceptance of and access to cash, and the proposal leaves flexibility for Member States to only take measures where they are needed and to tailor the measures to their particular national circumstances. In accordance with the principle of proportionality as set out in Article 5 of the Treaty on European Union (TEU), this proposal for a Regulation therefore does not go beyond what is necessary and proportionate in order to achieve its objectives.

• Choice of the instrument

A Regulation of the European Parliament and of the Council is an appropriate instrument to contribute to the creation of a single rulebook, being directly and immediately applicable, and thus removing the possibility of differences in application in different Member States due to divergences in transposition. This choice is in line with the objective of the proposal.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

• Ex-post evaluations/fitness checks of existing legislation

• Stakeholder consultations

The consultation strategy supporting this proposal was composed of a number of initiatives:

– A targeted consultation on a digital euro was launched by the Commission on 5 April 2022 and closed on 16 June 2022. A dedicated section of this consultation included specific questions on the legal tender of cash. The targeted consultation gathered information from industry specialists, payment service providers (including credit institutions, payment and e-money institutions), payment infrastructure providers, developers of payment solutions, merchants, merchant associations, retail payments regulators, and supervisors, anti-money laundering (AML) supervisors, financial intelligence units, and other relevant authorities and experts as well as consumer organisations, in order to feed into the impact assessment prepared by the

Commission in view of the proposal for a regulation on a digital euro and this proposal. The main findings of the targeted consultations are the following: consumer organisations, a number of business associations and most of the professional respondents which expressed their views supported legislative action at EU level to enhance legal certainty and enshrine the legal tender status of euro cash in legislation. In general, respondents suggested that practical elements should be considered when allowing further exceptions to the general principle of mandatory acceptance. Professional respondents appeared to have mixed views regarding the provision of administrative penalties for cash non-acceptance, while consumer associations supported this provision. Respondents showed their broad support for the prohibition on surcharges on payments with euro banknotes and coins in case of an EU regulation. Overall and in each relevant stakeholder group except financial institutions, respondents also supported a provision to guarantee the availability of cash, such as an obligation on Member States to adopt rules to ensure sufficient access to cash and report these rules to the Commission and the ECB, in case of an EU regulation. All results were analysed and considered when drafting the impact assessment and this proposal.

– Member States had the opportunity to give their views in various meetings of the Euro Legal Tender Expert Group (ELTEG). The discussions were supported by targeted consultations of Member States, using questionnaires. The ELTEG discussions confirmed the existence of legal uncertainty regarding the legal tender of euro cash and differing application of its principles in the euro area. ELTEG identified a range of issues of acceptance and availability of cash on the ground, and its final report includes a set of 25 principles on the legal tender of cash which have been taken into account in the drafting of this proposal.

– On 7 November 2022, the Commission organised a high-level conference on the digital euro, bringing together representatives from national and EU authorities, MEPs, private sector and civil society representatives and academia. The implications of the digital euro for euro cash were raised on a number of occasions during the discussions, highlighting mainly that the digital euro would complement cash.

– Throughout the process, the ECB has been closely involved in discussions at technical level.

• **Collection and use of expertise**

A number of inputs and sources of expertise were used in preparing this initiative, including the following:

– Evidence supplied through the various consultations listed above.

– Final report of ELTEG III[10].

– 2022 report of the Euro Retail Payments Board (ERPB).

– ECB surveys and working papers, staff working documents and statistics.

– Commission research.

[10] See the final report under the 5th meeting of ELTEG III.

- **Impact assessment**

This proposal is accompanied by an impact assessment, which was first submitted to the Regulatory Scrutiny Board (RSB) on 14 October 2022. The RSB gave a negative opinion on 18 November 2022. The impact assessment was resubmitted to the RSB on 23 March 2023 and was approved on 25 April 2023. Addressing the comments of the RSB, the impact assessment clarifies the link between the initiative on the digital euro and the one on the legal tender of cash, it details the specific aspects of the legal tender of cash initiative, and in particular on access to cash, and it exemplifies the significance of costs for banks of potential EU measures such as re-introducing ATMs.

There are two main aspects to the legal tender of cash: the acceptance of, and access to cash. In the absence of EU-level action, the extent to which cash is accepted by enterprises and the ability of citizens and enterprises to get sufficient access to cash will remain suboptimal and variable across the euro area, due to the lack of a common application and interpretation of the concept of legal tender.

The acceptance of cash is dealt with in the jurisprudence of the European Court of Justice, and the aspects related to the acceptance of cash which are covered in the CJEU ruling are codified and clarified in this proposal. These are: mandatory acceptance in principle, at full face value, with the power to discharge payment obligations. The impact assessment also suggests that more detailed clarifications as to the meaning of legal tender should be considered for the legal proposal to ensure added-value and legal certainty, whilst respecting the jurisprudence of the Court of Justice of the European Union. Furthermore, the impact assessment concludes that cash acceptance levels, including the prevalence of ex ante unilateral exclusions of cash, should be monitored and measures should be taken if acceptance of cash is not ensured.

As these matters relate to the scope, effects and exceptions to the key aspects of the concept of legal tender which are covered in the jurisprudence of the Court, legislating on these matters is largely a matter of clarification and codification in the interests of coherence and better law-making, with little margin for policy choice.

In relation to access to cash, there is scope for policy choice in relation to the nature and form of action to be taken, and these aspects are therefore analysed in boxes throughout the impact assessment. In order for cash to be used as an effective means of payment, access to various cash services should be ensured, in particular cash withdrawals and cash deposits on payment accounts of credit institutions. These services enable cash to circulate between different actors in society.

The impact assessment identified a growing (between 2016 and 2019) share of citizens which expressed concerns about access to ATMs, and a rather heterogeneous and sometimes problematic situation regarding cash access amongst the Member States. Consequently, there is a risk that it will not be possible to ensure that everyone in the euro area has access to basic cash services at reasonable conditions, notably price and distance. This could lead to the exclusion of vulnerable groups with a dependency on cash payments, and to the erosion and gradual loss of the effectiveness of the status of cash as legal tender, but also as a possible contingency payment method in crisis situations. Moreover, it should be noted that cash is seen by many as a payment method with social benefits, providing a clear overview of expenses, with high degrees of ease of use, speed, safety and anonymity/privacy in financial matters.

Two options were identified for addressing the access to cash matters: 1) a soft law instrument (e.g. a Commission Recommendation), or 2) a legally binding obligation on Member States in the proposed Regulation on legal tender of cash to be implemented by Member States. Choosing the first option would not allow for a uniform interpretation of the key principles of legal tender of cash. This would only partially address the objective of ensuring a sufficient access to cash and tolerating insufficient access in parts of the euro area could erode the effectiveness of the legal tender status of the single currency. The impact assessment concludes that the preferred option on access to cash is the second option, which would ensure coherence in the regulatory treatment of the two forms of the euro. Member States should designate one or more national competent authorities with oversight and regulatory powers over the market activities of the cash industry, and which should monitor access to cash and related cash services. Member States will have the responsibility to rigorously assess what sufficient and effective access means in their country-specific context (i.e. taking also into account demand for cash access), and what degree of action needs to be taken in order to guarantee it. The Commission would be able to analyse whether the measures taken corresponded to the common approach of the regulation and the Member States' assessments of the needs on their territory. In performing its analysis, the Commission would consult the European Central Bank. This option therefore would also ensure that the legal tender status of euro cash would be effectively and coherently protected across the euro area.

Since Member States would need to further specify their measures taken to ensure cash access, define the sufficient geographic standards for access requirements for ATMs that correspond to their population needs and service level specificities, and assess which payment service providers fall within access requirements and recommendations, the possible cost implications would be determined by the needs on the ground and the corresponding decisions of the Member States. If access to cash remains sufficient in a Member State, measures would not be needed in that Member State so there would not be any additional costs on banks. In Member States where cash access has already significantly deteriorated there could be costs for banks associated with restoring a sufficient level of access to cash, but the extent of such costs would depend on the decisions of the national authorities on the sufficient and effective levels of access, also in the case that the Commission would adopt an implementing act. The EU Regulation as such would not directly impose costs on banks or retailers.

This proposal is not expected to have any environmental impact, and is consistent with the European Climate Law. As outlined above, the proposal is expected to have a positive social impact, by enhancing the social inclusion of vulnerable groups which tend to be more dependent on cash or to be excluded from using electronic means of payment.

- **Regulatory fitness and simplification**

The present initiative is not a REFIT initiative. It is not based on an evaluation of any existing Regulation.

This initiative will be largely neutral from a one-in one-out perspective. There is currently no EU legislation on the legal tender of cash, hence there are no existing administrative costs that could be saved in this area.

This initiative does not impose any new and significant administrative costs, i.e. specific labelling, reporting or registration requirements, which would need to be offset by cost savings elsewhere.

- **Fundamental rights**

The initiative is consistent with fundamental rights. It respects the fundamental rights to freedom to conduct a business (enshrined in Article 16 of the EU Charter of Fundamental Rights of the European Union) and the fundamental right of consumer protection (Article 38).

As regards other relevant fundamental rights, the possible limitations ensuing from this Regulation are justified by objectives of general interest, respect their essence and comply with the principle of proportionality.

4. BUDGETARY IMPLICATIONS

This Regulation has no budgetary implications.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The proposal includes a general plan for monitoring and review of the impact of the Regulation. The Commission will be required to carry out a review on the operation and effects of this Regulation and submit a report to the European Parliament and to the Council, in line with the Commission's Better Regulation Guidelines. Member States should provide the Commission with necessary information for the preparation of that report.

- **Detailed explanation of the specific provisions of the proposal**

Subject matter and scope (Articles 1 and 2)

The proposal provides for detailed rules on the scope and effects of the legal tender of cash and on access to euro banknotes and coins. The rules govern the settlement of pecuniary debts in so far as they are to be settled in cash, where a payment obligation exists. The proposal also includes rules on admissible exemptions, rules for monitoring the acceptance of cash and in particular the prevalence of ex ante unilateral exclusions of cash in the euro area, and a provision to ensure effective access to cash.

Definition of legal tender and exceptions (Articles 4, 5 and 6)

The proposal sets out, for the first time in secondary legislation, a definition and regulation of legal tender for cash. Until this time 'legal tender' is only defined in the Recommendation of the Commission of 2010 and in the Court of Justice case law in Joined Cases C-422/19 and C-423/19, which interprets the notion of legal tender contained in Article 128(1) TFEU for euro banknotes. In line with that case law, Article 4 defines the legal tender of cash as entailing mandatory acceptance, at full face value, with the power to discharge from a payment obligation. A payee shall not refuse euro cash tendered in payment unless the parties have agreed on a different means of payment or an exception applies.

Article 5 sets out the conditions under which a refusal to accept euro cash would be legally possible; such a refusal must be made in good faith, be based on legitimate grounds, and in line with the principle of proportionality in view of the concrete circumstances in which a payment is to be made. The burden of proof that these conditions are met for such good faith circumstantial exceptions is on the payee. Article 5 sets out two legitimate grounds on which euro cash may be refused on that basis in a non-exhaustive list, namely the tendering of banknotes the value of which is manifestly disproportionate to the value of the amount to be settled, and in exceptional cases where, at the relevant time, the enterprise has no change available or if the enterprise would not have enough change available as a result of that payment to carry out its normal transactions.

Article 6 empowers the Commission to adopt additional exceptions of a monetary law nature to the principle of mandatory acceptance by means of delegated acts. These exceptions should be justified and proportionate, should not undermine the effectiveness of the legal tender status of euro cash, and should only be permitted provided that other means for the payment of monetary debts are available.

Acceptance of payments in cash (Article 7)

Article 7 aims to ensure that the fundamental legal tender principle of mandatory acceptance is not undermined by widespread cash non-acceptance levels through the unilateral and ex ante exclusion of cash by enterprises.

Member States would have the obligation to monitor the level of ex ante unilateral exclusions of payments in cash and to ensure the acceptance of cash fulfilling the principle of mandatory acceptance of cash as outlined in Article 4. Member States would need to report annually their assessment to the Commission and the European Central Bank. If cash non-acceptance levels are deemed to undermine the mandatory acceptance of euro banknotes and coins, Member States would need to take remedial measures.

Access to cash (Articles 8)

Article 8 establishes the obligation on Member States to ensure sufficient and effective access to cash throughout their territory, in all their regions, including urban and non-urban areas. This is required to safeguard the effectiveness of the legal tender of euro cash in practice.

Member States would have the obligation to monitor the access to cash. They would also need to assess annually the situation in their territory and report their assessment to the Commission and the European Central Bank. If sufficient and effective access to cash is not ensured, Member States would need to take remedial measures.

Procedural aspects (Article 9)

This article aims to set out the procedurals aspects in order to effectively implement the obligations set out in Articles 7 and 8. In this regard all Member States are required to designate one or more national competent authorities, which would have the necessary administrative and regulatory powers as regards acceptance of payments in cash and access to cash.

The designated national competent authorities would be entitled to assess if the principle of mandatory acceptance of cash is not undermined by widespread cash non-acceptance levels through the unilateral and ex ante exclusion of cash by enterprises, and if the access to cash is sufficient and effective in the Member States' territories. The assessment will be based on a set of common indicators adopted by the Commission by way of implementing acts. That assessment would be reported to the Commission as provided in Article 13. If Member States would take remedial measures regarding their obligations set out in Articles 7 and 8, those remedial measures would need to be indicated in the annual report. Member States would not be required to adopt implementing measures if their assessment shows that the principle of mandatory acceptance of cash is not undermined by widespread cash non-acceptance levels through the unilateral and ex ante exclusion of cash by enterprises, and if sufficient and effective access to cash is ensured on their territory.

However, where the actions of a Member State appear insufficient or if the Commission considers that the acceptance of cash payments and/or sufficient and effective access to cash in a Member State is not in line with the obligations set out in Articles 7 and 8 despite the findings of the annual report, the Commission is empowered to adopt implementing acts

providing for adequate and proportionate measures that should be adopted by the Member State concerned.

Delegated and implementing acts (Articles 10, 11)

The Commission will have the power to adopt delegated acts. Article 10 clarifies the procedure to be followed when delegated acts are adopted, stipulated in article 6.

Article 11 indicates that the Commission shall be assisted by a committee in relation to the implementing act procedure stipulated in article 9.

Penalties (Article 12)

In order to ensure that the Regulation's provisions are enforced, while allowing Member States a level of flexibility on the nature of the penalties applicable, Article 12 provides for Member States to lay down rules on penalties applicable to infringements of the Regulation.

Reporting (Article 13)

Article 13 provides for each Member State to submit an annual report to the Commission and the ECB on the exceptions to mandatory acceptance and their application, on detailed data and analysis of the situation in the Member State as regards access to cash and acceptance of cash, and the remedial measures to be taken pursuant to Articles 7 and 8, and on the implemented penalties.

Remedies (Article 14)

Article 14 requires Member States to inform natural persons and enterprises about the channels and remedies they have in order to lodge complaints with the competent authorities about cases of unlawful refusal to accept cash and insufficient access to cash.

Interaction between euro banknotes and coins and the digital euro (Article 15)

Article 15 requires the convertibility of cash and the digital euro into each other at par, and for the avoidance of doubt gives the payer the right to choose to pay in cash or digital euro where mandatory acceptance of both applies in accordance with this Regulation, including notably those provisions affecting mandatory acceptance (i.e. articles 4, 5, 6 and 7), as well as with the digital euro Regulation.

Review (Article 16)

Article 16 provides for the Commission to carry out a review of the Regulation five years after its entry into force and to report to the Parliament and Council. Member States should provide the Commission with the necessary information for the preparation of this report.

Entry into force (Article 17)

The Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

2023/0208 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the legal tender of euro banknotes and coins

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the functioning of the European Union and in particular Article 133,

Having regard to the proposal form the European Commission,

Having regard to the opinion of the European Central Bank,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) According to Article 3(1), point (c), of the Treaty on the Functioning of the European Union (TFEU), the Union has exclusive competence as regards monetary policy for the Member States whose currency is the euro.

(2) Pursuant to Article 128(1) of the Treaty on the Functioning of the European Union and Article 10 of Council Regulation (EC) No 974/98[11] the euro banknotes are to be the only banknotes which have the status of legal tender in Member States whose currency is the euro. Pursuant to Article 11 of Regulation (EC) No 974/98, euro coins shall be the only coins which have the status of legal tender in the Member States whose currency is the euro.

(3) Commission Recommendation on the scope and effects of legal tender of euro banknotes and coins[12] provides for a common definition of legal tender of euro banknotes and coins.

(4) In a judgment of 26 January 2021[13], the Court of Justice of the European Union clarified that the concept of 'legal tender' mentioned in Article 128(1) TFEU is a concept of Union law that must be given an autonomous and uniform interpretation throughout the EU[14]. Secondly, the Court held that the concept of 'legal tender' of a means of payment denominated in a currency unit signifies that "that means of

[11] Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro (OJ L139, 11.5.1998, p.1).

[12] OJ L83, 30.3.2010, p.70.

[13] See judgment of 26 January 2021 in Joined Cases C-422/19 and C-423/19, *Hessischer Rundfunk*, EU:C:2021:63

[14] See judgment of 26 January 2021 in Joined Cases C-422/19 and C-423/19, *Hessischer Rundfunk*, EU:C:2021:63, point45

payment cannot generally be refused in settlement of a debt denominated in the same currency unit, at its full face value, and without surcharges for the payer, with the effect of discharging the debt"[15]. Thirdly, the Court stated that an obligation to accept euro banknotes and coins may, in principle, be restricted by the Member States whose currency is the euro for reasons of public interest and pursuant to their competences outside of the area of monetary law and policy and of other exclusive Union competences, provided those restrictions are justified by a public interest objective and proportionate to it[16].

(5) The acceptance of euro banknotes and coins tendered as means of payment can exceptionally be refused if the refusal is made in good faith, based on legitimate grounds and concrete circumstances, which are beyond the control of the payee, and if the refusal is proportionate. For example, the refusal can be justified if for the settlement of a monetary debt the tendered euro banknote is disproportionate compared to the amount owed to the payee, such as the tendering of a two hundred euro banknote for the settlement of a debt of less than five euro. In accordance with Council Regulation 974/98, except for the issuing authority and for those persons specifically designated by the national legislation of the issuing Member State, no party should be obliged to accept more than 50 coins in any single payment.

(6) In order to ensure that the principle of mandatory acceptance of payments in euro banknotes and coins is not effectively undermined by widespread and structural refusals of cash payments, it is necessary for Member States to monitor the level of ex ante unilateral exclusions of payments in cash when transactions are performed in physical premises. Therefore, Member States should regularly monitor the level of unilateral ex ante exclusions of payments in cash when payments are performed in physical premises throughout their territory, in all their different regions, including urban and non-urban areas, on the basis of common indicators which allow for comparisons between the Member States. If in light of their assessment acceptance of payments in cash is ensured on their territory, Member States would not need to adopt specific measures in relation to their respective obligation. However, they would need to continue monitoring the situation. If a Member State concludes that ex ante unilateral exclusions of cash undermine the mandatory acceptance of payments in euro banknotes and coins in all or part of its territory, that Member State should take effective and proportionate measures to remedy the situation, such as a prohibition or restrictions on ex ante unilateral exclusions of cash in all or parts of its territory, for example in rural areas, or in certain sectors which are deemed essential such as post offices, supermarkets, pharmacies or healthcare, or for certain types of payments which are deemed essential.

(7) With a view to an effective implementation of their obligation to ensure sufficient and effective access to cash, Member States should regularly monitor the level of access to cash throughout their territory, in all their different regions, including urban and non-urban areas, on the basis of common indicators which allow for comparisons between the Member States. Common indicators could include factors that affect access to cash, such as density of cash access points in relation to population, withdrawal and deposit conditions, including fees, the existence of different networks with different

[15] See judgment of 26 January 2021 in Joined Cases C-422/19 and C-423/19, *Hessischer Rundfunk*, EU:C:2021:63, point 46.

[16] See judgment of 26 January 2021 in Joined Cases C-422/19 and C-423/19, *Hessischer Rundfunk*, EU:C:2021:63, points 67 and 68.

access modalities for customers, urban-rural and socio-economic variations, and access difficulties for certain population groups. If in the light of their assessment access to cash is deemed sufficient and effective on their territory, Member States would not need to adopt specific measures in relation to their respective obligation. However, they would need to continue monitoring the situation. If a Member State concludes that access to cash is not sufficient and effective in all or part of its territory, or is at risk of deteriorating in the absence of action, appropriate remedial measures should be taken to remedy the situation, such as geographic access requirements on payment service providers providing cash withdrawal services to maintain cash services at a sufficient number of their branch offices where they conduct business, or through an appointed agent for online only credit institutions, or maintain a sufficient density of automated teller machines (ATMs) where they conduct business taking into account a good geographic spread in relation to population, also taking into account possible pooling of ATMs. Other remedial measures could include recommendations addressed to non-credit institutions, such as independent ATM operators, retailers or post offices, encouraging to complement the cash services of banks.

(8) The Commission should be empowered to adopt implementing acts on a set of common indicators of general application in the euro area, which would allow the Member States to effectively monitor and assess the acceptance of payments in cash and access to cash throughout their territory, in all their different regions, including urban and non-urban areas. In view of the preparation of such implementing acts, the Commission should consult the European Central Bank.

(9) The Commission should be empowered to adopt implementing acts addressed to a specific Member State when the measures proposed by that Member State appear insufficient or in cases where, in spite of the findings of the annual report sent by that Member State, ex ante unilateral exclusions of cash are undermining the principle of mandatory acceptance of payments in euro banknotes and coins and/or where access to cash is not sufficient and effective. Such an implementing act could require the Member State concerned to take measures such as those outlined in recitals 7 and 8, or measures that have been considered effective in other Member States in ensuring that the principles of mandatory acceptance of payments in cash or sufficient and effective access to cash are not undermined.

(10) In accordance with the principle of sincere cooperation, the Commission, the European Central Bank and the designated national competent authorities with the required powers as regards acceptance of payments in cash and access to cash, and over the cash-related market activities of the cash industry should closely collaborate on issues related to acceptance of payments in cash and access to cash. A regular dialogue among these institutions and authorities, based notably on the annual reports of Member States to the Commission and the European Central Bank, should aim at identifying cases of widespread ex ante unilateral exclusions of cash and inadequate access to cash in specific national territories or regions. It would also aim at designing and adopting remedial measures that Member States should adopt as a means to comply with their obligations to ensure acceptance of cash and sufficient and effective access to cash.

(11) In order to ensure that additional exceptions to the mandatory acceptance of euro cash may be introduced at a later stage if they are required, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to supplement this Regulation by introducing additional exceptions to the principle of mandatory acceptance for the euro area as a whole. The Commission may only adopt

such additional exceptions if they are necessary, proportionate to their aim, and preserve the effectiveness of the legal tender status of euro cash. The power of the Commission to adopt delegated acts for the introduction of additional exceptions to the mandatory acceptance of accept euro cash should be without prejudice to the possibility for Member States, pursuant to their own powers in areas of shared competence, to adopt national legislation introducing exceptions to the mandatory acceptance deriving from the legal tender status in accordance with the conditions laid down by the Court of Justice of the European Union in the judgment in Joined Cases C-422/19 and C-423/19. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(12) In order to ensure uniform conditions for the provisions on the acceptance of payments in cash and sufficient and effective access to cash, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[17]. The advisory procedure should be used for the adoption of the implementing acts on the acceptance of and access to cash as they concern measures with a low impact, namely indicators for monitoring the acceptance of and access to cash, or acts addressed to individual Member States which in certain circumstances may need to adopt appropriate measures which would reflect the specificities of their national territories, regions and urban areas, in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.

(13) This Regulation ensures full respect for the fundamental right of freedom to conduct a business and the fundamental right of consumer protection enshrined in Article 16 and 38 of the Charter of Fundamental Rights of the European Union respectively. This Regulation concerns the preferred payment method of the currency that has legal tender status, which citizens legitimately may choose to settle their debts. Thus, the measures in this Regulation only concern the way enterprises receive payments. The interference with those fundamental rights is therefore indirect and very limited. It is justified by the general interest objective of ensuring the effectiveness of legal tender, and is proportionate to this objective.

(14) The share of cash payments compared to electronic payments is higher for certain vulnerable groups including older age groups, persons with disabilities, and people with limited digital skills and lower income levels. This proposal is consistent with the European Accessibility Act[18], which covers automated teller machines (ATMs). Furthermore, financially excluded people, such as the unbanked, asylum seekers and migrants, who may not be able or willing to use means of payment supplied by the private sector, rely on cash as their payment method. Cash is considered to provide for a clear overview of expenses, with high degrees of ease of use, speed, safety and privacy. These vulnerable groups are more at risk of losing their access to a method of

[17] OJ L55, 28.2.2011, p.13.

[18] Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services (OJ L151, 7.6.2019, p.70).

payment if their access to cash deteriorates. Thus, this Regulation would aim to preserve financial inclusion of vulnerable groups with a dependency on cash payments by ensuring that everyone in the euro area would be free to choose the preferred payment method and has access to basic cash services, while supporting Member States in continuing their policy efforts to promote digital financial inclusion, for example through measures aimed to increase financial and specifically digital finance literacy in education and training systems, as well as to address gaps in digital infrastructure, including in rural areas.

(15) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of ensuring the acceptance of cash and access to cash to lay down the necessary rules. This Regulation does not go beyond what is necessary in order to achieve the objectives pursued, in accordance with Article 5(4) of the Treaty on European Union.

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down detailed rules on the scope and effects of the legal tender of, and access to, euro banknotes and coins, as provided for, respectively, by Article 128(1) TFEU and by Article 11 of Regulation (EC) No 974/98, in order to ensure its effective use as a single currency.

Article 2

Scope

1. This Regulation applies to the settlement of pecuniary debts in so far as they are to be settled in cash, in whole or in part, where a payment obligation exists in accordance with the applicable law or established legal practices. To ensure the effectiveness of the legal tender of cash, this Regulation applies also to ex ante unilateral exclusion of payments in cash and to the access to cash.

2. This Regulation shall not apply to payments for goods or services purchased at a distance, including online.

Article 3

Definitions

For the purposes of this Regulation, the following definitions apply:

1. ‘cash’ means euro banknotes and coins;

2. ‘cash industry’ means credit institutions offering payment accounts to customers and cash service providers involved in the managing of the distribution and circulation of euro banknotes and coins;

3. ‘credit institution’ means a credit institution as defined in Article 4 (1) of Regulation (EU) No 575/2013[19] of the European Parliament and of the Council;

4. ‘ex ante unilateral exclusions of cash’ means a situation when a retailer or service provider unilaterally excludes cash as a payment method for example by introducing a ‘no cash’ sign. In this case, the payer and payee do not freely agree to a means of payment for a purchase;

5. ’payer’ means any person who makes a payment in euro cash;

6. ’payee’ means any person who is the intended recipient of funds which have been the subject of a payment transaction in euro cash;

7. ‘face value’ means the denomination in euros of a euro banknote or coin, as printed on that banknote or minted on that coin;

8. ‘enterprise’ means a person engaged in an economic activity, irrespective of its legal form, including partnerships or associations regularly engaged in an economic activity.

Article 4

Legal tender

1. The legal tender status of euro banknotes and coins shall entail their mandatory acceptance, at full face value, with the power to discharge from a payment obligation.

2. In accordance with the mandatory acceptance of cash, the payee shall not refuse euro banknotes and/or coins tendered in payment to comply with that obligation.

3. In accordance with the acceptance at full face value of cash, the monetary value of euro banknotes and/or coins tendered in settlement of a debt shall be equal to the

[19] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, OJ L 176, 27.6.2013, p. 1–337.

amount in euro indicated on the banknotes and/or coins. Surcharges on the settlement of debt with euro banknotes and coins shall be prohibited.

4. In accordance with the power to discharge from a payment obligation, a payer shall be able to discharge from a payment obligation by tendering euro banknotes and coins to the payee.

Article 5

Exceptions to the principle of mandatory acceptance of euro banknotes and coins

1. By way of derogation from Article 4(2), a payee shall be entitled to refuse euro banknotes and coins in any of the following cases:

(a) where a refusal is made in good faith and where such refusal is based on legitimate and temporary grounds in line with the principle of proportionality in view of concrete circumstances beyond the control of the payee;

(b) where, prior to the payment, the payee has agreed with the payer on a different means of payment.

For the purposes of point (a), the burden of proof to establish that such legitimate and temporary grounds existed in a particular case and that the refusal was proportionate shall be on the payee.

2. For the purposes of the application of paragraph 1, such legitimate grounds may include:

i. Regarding high denomination banknotes, if the value of the banknote tendered is manifestly disproportionate compared to the value of the amount to be settled.

ii. In exceptional cases, if the enterprise has no change available at the moment where the cash is tendered in payment, or if there would be not enough change available as a result of that payment for an enterprise to carry out its normal daily business transactions.

Article 6

Additional exceptions to the principle of mandatory acceptance of euro banknotes and coins of a monetary law nature

The Commission is empowered to adopt delegated acts in accordance with Article 10 to supplement this Regulation by identifying additional exceptions of a monetary law nature to

the principle of mandatory acceptance. Those exceptions shall be justified by an objective of public interest and proportionate to that aim, shall not undermine the effectiveness of the legal tender status of euro cash, and shall only be permitted provided that other means for the payment of monetary debts are available. When preparing those delegated acts, the Commission shall consult the European Central Bank.

Article 7

Acceptance of payments in cash

1. In order to ensure the acceptance of cash in accordance with Article 4(2), Member States shall monitor the acceptance of payments in cash and the level of ex ante unilateral exclusions of payments in cash throughout their territory, in all their different regions, including urban and non-urban areas, on the basis of the common indicators adopted by the Commission and shall assess the situation.

2. Member States shall notify the results of their monitoring and assessment of the situation as regards the level of acceptance of payments in cash in accordance with Article 9(3).

3. If a Member State considers that the level of acceptance of payments in cash in their territory or parts thereof undermines mandatory acceptance of euro banknotes and coins, it shall set out the remedial measures it commits to take in accordance with Article 9(4).

Article 8

Access to cash

1. Member States shall ensure sufficient and effective access to cash throughout their territory, in all their different regions, including urban and non-urban areas. In order to ensure sufficient and effective access to cash, Member States shall monitor access to cash throughout their territory, in all their different regions, including urban and non-urban areas, on the basis of the common indicators adopted by the Commission and shall assess the situation.

2. Member States shall notify the results of their monitoring and assessment of the situation as regards access to cash in accordance with Article 9(3).

3. If a Member State considers that sufficient and effective access to cash is not ensured, it shall set out the remedial measures it commits to take in accordance with Article 9(4).

Article 9

Procedural aspects

1. With a view to implementing the obligations set out in Articles 7 and 8, Member States shall designate one or more national competent authorities with the required powers as regards acceptance of payments in cash and access to cash, and over the cash-related market activities of the cash industry.

2. For the purposes of Articles 7 and 8, the Commission shall adopt implementing acts of general application on a set of common indicators Member States shall use to monitor and assess the acceptance of payments in cash and access to cash throughout their territory, in all their different regions, including urban and non-urban areas. Those implementing acts shall be adopted [within X months after the entry into force of this Regulation] in accordance with the advisory procedure referred to in Article 11. When preparing those implementing acts, the Commission shall consult the European Central Bank.

3. The designated national competent authorities shall notify the results of their monitoring and assessment of the situation as regards the levels of acceptance of payments in cash and access to cash, giving grounds and data for their assessment, in an annual report to be addressed to the Commission and the European Central Bank as referred to in Article 13.

4. If a Member State considers that the level of acceptance of payments in cash undermines mandatory acceptance of euro banknotes and coins or that sufficient and effective access to cash is not ensured, it shall indicate in its annual report the remedial measures it commits to take in order to comply with the obligations set out in Articles 7 and 8. The remedial measures shall enter into force without undue delay.

5. The Commission shall examine the annual reports in close consultation with the European Central Bank. If the remedial measures proposed by a Member State pursuant to paragraph 4 appear insufficient, or if the Commission considers that the acceptance of cash payments or sufficient and effective access to cash in a Member State is not in line with the obligations set out in Articles 7 and 8 despite the findings of the annual report, the Commission shall adopt implementing acts providing for adequate and proportionate measures that shall be adopted by the Member State concerned within the deadline laid down in the respective implementing act. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 11.

Article 10

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 6 shall be conferred on the Commission for an indeterminate period of time from *[date of entry into force of this Regulation]*.

3. The power to adopt delegated acts referred to in Article 6 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 6 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of one month of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by one month at the initiative of the European Parliament or of the Council.

Article 11

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

Article 12

Penalties

Member States shall lay down the rules on penalties [*including financial penalties and non-criminal fines*] applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall, within one year after the entry into force of this Regulation, notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them.

Article 13

Annual reports

1. Member States shall submit on an annual basis a report to the Commission and the European Central Bank including information on the following aspects:

   (a) the established exceptions to the principle of mandatory acceptance and their application;

   (b) detailed data and assessment of the situation in the Member State as regards acceptance of payments in cash and access to cash, and the remedial measures to be taken pursuant to Articles 7 and 8;

   (c) the implemented penalties including financial penalties and non-criminal fines.

2. The first annual report shall be submitted one year after the entry into force of this Regulation. Subsequent annual reports shall be submitted yearly after the date of the entry into force of this Regulation.

3. The Commission shall examine the annual reports in close consultation with the European Central Bank.

Article 14

Duty of Member States to inform about remedies

Member States shall provide natural persons and enterprises with clear information on the channels and effective remedies they have at their disposal to lodge complaints with competent national authorities about cases of unlawful refusal to accept cash and insufficient and ineffective access to cash.

Article 15

Interaction between euro banknotes and coins and the digital euro

1. Euro banknotes and coins and the digital euro shall be convertible into each other at par.

2. Payees of a monetary debt denominated in euro shall accept payments in euro banknotes and coins according to the provisions of this Regulation, irrespective of whether they accept payments in digital euro in accordance with Regulation [XXX on the establishment of the digital euro]. Where the acceptance of euro banknotes and coins and the digital euro is mandatory in accordance with the provisions of this Regulation and Regulation (XXX on the establishment on the Digital Euro), the payer is entitled to choose the means of payment

Article 16

Review

By *[date-five years after the entry into force]*, the Commission shall carry out a review on the operation and effects of this Regulation and submit a report to the European Parliament and to the Council. Member States shall provide the Commission with necessary information for the preparation of that report.

Article 17

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*