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From:	Presidency
To:	Working Party on Financial Services and the Banking Union (Digital Euro Package) Financial Services Attachés

Subject:	Digital euro: legal tender cash: working party 25.10.23 Presidency note 6 Drafting suggestions
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Presidency note 6 for the Council Working Party - 25 October
Drafting suggestions by Presidency

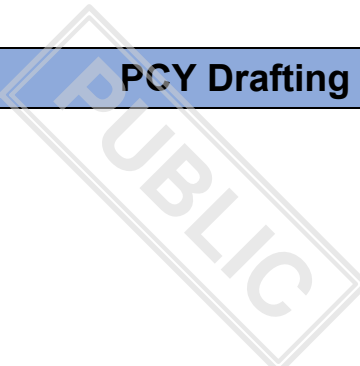
Based on the discussions in the previous working party and the MS comments on the text received by the Presidency, we will present some drafting suggestions of the regulation proposal where we have observed more consensus.

Previously to detail these drafting suggestions, it is worth noting that some MS have suggested replicating within the core text of this regulation some provisions that already apply in EU law or are part of a judgment by the European Court of Justice due to its relevance to fundamental aspects of this regulation. These provisions are:

- Judgment of the Court of Justice of 26 January 2021, Hessischer Rundfunk, C-422/19 and C-423/19: Member States may introduce restrictions to the obligation to accept euro banknotes and coins if they act within their competences and subject to certain conditions.
- Article 11 of Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro: “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.”

In the preparation of a new law, references to other laws can be handled in different ways, depending on the specific legal context, drafting conventions, and the preferences of the legislative body. In the regulation at hand, the Commission has opted for including these references within the recital section as the most suitable method to provide the necessary context and background information.

The Presidency's stance is, unless otherwise agreed among Member States and guided by legal services' advice on best legal practices, to maintain the criteria established by the Commission on this matter.

Commission proposal	PCY Drafting Suggestion
2023/0208 (COD) Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the legal tender of euro banknotes and coins	
Recital (3) Commission Recommendation on the scope and effects of legal tender of euro banknotes and coins provides for a common definition of legal tender of euro banknotes and coins.	Recital (3) Commission Recommendation 2010/191/EU of 22 March 2010 on the scope and effects of legal tender of euro banknotes and coins provides for a common definition of legal tender of euro banknotes and coins.
EXPLANATION: for the sake of clarity it is proposed to complete the reference to the Commission's recommendation	
Recital (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	Recital (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 a payee receive payments. The interference with those fundamental rights is therefore indirect and very limited. It is

Commission proposal	PCY Drafting Suggestion
interest objective of ensuring the effectiveness of legal tender, and is proportionate to this objective.	justified by the general interest objective of ensuring the effectiveness of legal tender, and is proportionate to this objective.
EXPLANATION: Recital 13 appears not being entirely consistent with the provision laid out in Article 4. While Article 4(2) extends a principle duty of acceptance to all payees, recital (13) could be interpreted to assume that this duty is limited to enterprises.	
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.	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.
EXPLANATION: The phrase ' <i>in so far as they are to be settled in cash</i> ' could lead to a loophole to circumvent the principle of mandatory acceptance. It could be understood as implying that only certain pecuniary debts can be settled in cash.	

Commission proposal	PCY Drafting Suggestion
Article 5 Exceptions to the principle of mandatory acceptance of euro banknotes and coins	
(b) where, prior to the payment, the payee has agreed with the payer on a different means of payment.	(b) where, prior to the payment, the payer and payee have agreed the payee has agreed with the payer on a different means of payment.
EXPLANATION: The previous wording might suggest that payee and payer are not acting on an equal footing. This new wording is in line with the definition of “ex ante unilateral exclusion of cash” of article 3.4	
Article 12 Penalties	
Member States shall lay down the rules on penalties [<i>including financial penalties and non-criminal fines</i>] 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.	Member States shall lay down the rules on penalties [<i>including financial penalties and non-criminal fines</i>] 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 two years 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.

Commission proposal	PCY Drafting Suggestion
EXPLANATION: The proposed period of one year is too short to make the necessary regulatory adjustments to national law and related legislative procedures of each MS. There is a common opinion among MS to extend the deadline to set out rules on penalties and report those rules to the Commission. There is almost an unanimous opinion among member states on extending the deadline.	
Article 13 Annual reports	
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.	2. The first annual report shall be submitted two years after the entry into force of this Regulation common indicators referred to in article 9(2) has been adopted by the Commission . Subsequent annual reports shall be submitted yearly. after the date of the entry into force of this Regulation.
EXPLANATION: The proposed period of one year is too short to make the necessary adjustments and preparations (designation of National Authorities and tools for monitoring acceptance/access of cash) and prepare an annual report. Deadline should run after the adoption of the common indicators by the Commission and not from the entry into force of the regulation. There is almost an unanimous opinion among member states on extending the deadline.	