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WORKING DOCUMENT

From:	Presidency
To:	Working Party on Financial Services and the Banking Union (Digital Euro Package) Financial Services Attachés
Subject:	Digital Euro Regulation, Legal Tender of Cash Regulation, WP 11.04.2025 - Replies by 20 MS

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Thank you for your cooperation!

Presidency discussion note on	MS comments
Discussion on the alignment of euro cash and digital euro legal tender provisions (WK 3947/25)	FR (MS comments): France would like to thank the Polish Presidency for organising this new session on the digital euro. We reiterate the importance of conducting our debates in the Council on the basis of substantial impact studies, given the impact of this project on the payment industry and more generally on all administrations, businesses and citizens of the European Union, if only in terms of costs. We strongly reiterate this request to the Commission and the ECB.
1. Provisions that are aligned or that do not need to be aligned	
Q1. Do Member States agree with the allocation of the provisions to the two categories?	AT (MS comments): Yes, we agree.

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	BE (MS comments): Yes, we agree. CZ (MS comments): *At this point we are open.* DE (MS comments): We thank the PCY for this insightful work and the proposed categories. With regard to possible alignments of provisions, we refer to our comments provided in the following answers. EE (MS comments): EE: In general, we agree. EL (MS comments): EL: In general, we welcome the Presidency's efforts to streamline the legal tender provisions of DER and LTCR, while leaving room for certain differences, when these are warranted. In this context, we agree with the allocation of the provisions to the two categories. ES (MS comments): Yes. FI (MS comments): Yes, allocation is ok.

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	FR (MS comments): France agrees with the analysis proposed by the Polish Presidency and the categorisation in categories A and B. HR (MS comments): Yes, we agree with the allocation of the provisions to the two categories under A and B. IE (MS comments): IE supports the categorisation of provisions. LT (MS comments): We agree LU (MS comments): LU: yes NL (MS comments): **NL comment:** We can support the PCY's allocation. PT (MS comments): Yes, we agree with the proposed allocation of the provisions to the two categories A and B. RO (MS comments):

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	We agree with having different wording for the provisions of the euro cash and the digital euro. SI (MS comments): In principle we agree with the proposed allocation to two categories – fully aligned provisions (A) vs. provisions that do not need to be aligned (B). We also agree that in some cases the differences categorised as B in the Annex to the Presidency discussion note (WK 3947/2025 ADD 1) are indeed warranted, whereas some others (in our opinion) are not and we should strive to have as minimum differences as possible given that we refer to banknotes / coins and digital euro as complements. We hereby highlight the following MAIN differences (further to the ones categorised as "C" in the Annex to the Presidency discussion note (WK 3947/2025 ADD 1)) which would in our opinion necessarily require further alignment between LTCR and DER: 1. (i) Current proposal of LTCR is **limiting its scope by allowing possibilities to further restrict the principle of mandatory acceptance of cash for reasons of public interest** (based on Hessischer & Rundfunk judgment of the CJEU, which was formed taking account of the existing / non-existing legal basis at that time) + (ii) a new compromise proposal of LTCR by PL PRE foresees a **clear prohibition of ex-ante unilateral exclusions of payments in cash limited only to transactions between retailers or service providers and customers / payers**, leaving any natural or legal persons in their public nature (like public administration offices or other similar entities) completely out of the picture (meaning these entities would be entitled to unilaterally exclude cash payments). DER proposal is much stricter in these aspects and we would prefer – for the sake of level-playing field and not to further discourage the use of cash – that this stricter view would be also applied in the LTCR.

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	2. As outlined by Slovenia on many occasions at CWP meetings and in written procedures, **in the LTCR proposal there are no provisions regarding fees that cash service providers can charge for cash services** (nor does the document "*Presidency discussion note: Discussion on the alignment of euro cash and digital euro legal tender provisions*" (WK 3947/2025 INIT) highlight this discrepancy between regulations). To the contrary DER proposal specifically addresses this issue and sets some clear provisions as to how and when certain fees would apply. Moreover, in DER proposal, in its recital 40, clear interpretation is provided as to why the question of fees should be regulated: *"To ensure wide access to and use of the digital euro, consistent with its status of legal tender, and to support its role as monetary anchor in the euro area, natural persons… should not be charged for basic digital euro payment services."* This aim is then clearly reflected also in Article 17 of DER. **Given that the same rationale applies also for cash as a payment instrument being (at least) equally important complement to digital euro, we are convinced such provisions on fees should be "replicated" also in LTCR proposal**. Similar to the way fees are regulated in DER, our proposal is **to regulate fees in LTCR at least for the basic cash services** and not necessarily for the full range of cash services that these providers might offer. In our view, **cash withdrawals and cash deposits by natural persons should be free of charge and we propose to include this provision in the main text of the LTCR** (for the rest of the cash-related services, we could also propose maximum fees - ceilings). Without including any provisions on fees in LTCR we will not succeed in preserving the effectiveness of the legal tender status of cash, which is in our opinion the primary goal of this regulation. Already seen in today's perspective – in practice, cash service providers apply several different fees for these services and these fees are increasing over time. And if we

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	refuse to react on current trends we would discourage citizens from using cash as fees would continue to rise. As currently stands, it even seems we are trying to intentionally omit this question and favour one payment option (digital euro) against the other (cash) by regulating fees in DER and not also in LTCR. **For the sake of level-playing field with DER we urge the presidency to introduce additional provisions on cash related fees in the LTCR proposal**. SK (MS comments): We agree.
2. Provisions where questions arise on the need for alignment between the LTCR and the DER	
1) Definitions of ‘payer’ and ‘payee’ (Article 3 LTCR and Article 2 DER)	
Q2. What are Member States’ views on the above issues?	AT (MS comments): In general, we prefer that these provisions are linguistically consistent, to the extent possible, for physical and digital forms of legal tender. We also welcome any potential streamlining with PSDII/III definitions, again, to the extent possible. BE (MS comments): Alignment can be considered. BG

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	(MS comments): We are on the view that the current text of art. 2 of the DER encompasses both individuals and entities. CZ (MS comments): *We currently have no other comments.* DE (MS comments): • In general, we would be supportive of an aligned wording. • However, we wonder whether it would increase the quality of the text, if the definitions of "payer" and "payee" were aligned – to the extent possible – with the definitions in the proposals for a PSD3/PSR. • The PSD already contains definitions of the terms "payer" and "payee" in Article 5 (8) and (9). Integrating deviating and possibly contradicting definitions of "payer" and "payee" into the DER could lead to inconsistencies and legal uncertainty in the application of PSD and PSR. • Therefore, one might consider aligning the definitions in the LTCR, DER and PSD as much as possible. • Question: Distinction between 'natural and legal persons' – does this encompass also self-employed, other businesses and other legal entities such as non-profit organisations? EE (MS comments): EE: We support alignment, including with the PSD/PSR. In addition, the different levels of digitalisation in the Member States play a role. EL

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	(MS comments): EL: In our view, we should not deviate from other definitions of 'payer' and 'payee' to ensure a coherent approach (in this regard, see the PSD3 & PSR definitions). ES (MS comments): The DER definition should be changed to align with PSD2, and, to certain extent, with the wording of the LTCR. We suggest the following drafting: - 'payer' means ~~anyone~~ **a natural or legal person, irrespective of its private or public nature,** who ~~has~~ **holds** a digital euro payment account/ **vault** (the way we decide to call it) and allows a payment order from that digital euro payment account/**vault;** - 'payee' means ~~anyone~~ **a natural or legal person, irrespective of its private or public nature,** who is the intended recipient of funds which have been the subject of a digital euro payment transaction; The LTCR should also be modified so that the beginning matches with the above: - Payer means **a** ~~any~~ natural or legal person, irrespective of its private or public nature, who makes a payment in euro cash - Payee means **a** ~~any~~ natural or legal person, irrespective of its public or private nature, who is the intended recipient of funds which have been the subject of a payment transaction in euro cash. FR (MS comments): France would like to thank the Polish Presidency for this work on aligning the two texts. It welcomes with interest and supports the proposal to

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	include the Spanish Presidency's wording of Article 3 of the LTCR in Article 2 of the 'Euro Digital' Regulation. HR (MS comments): We find that the alignment of the definitions of the "payer" and "payee" is needed and welcomed, to make it clear that term "any person" encompass both individuals and entities (whether public or private). Also, we find that definitions of the "payer" and "payee" in DER should be aligned with definitions in PSD3/PSR. IE (MS comments): IE considers that the definitions of "payer" and "payee" in both the LTCR and DER should refer to "natural and legal" person and agrees that there is a potential need for alignment. The definitions should also be consistent with other legislation. IT (MS comments): We are in favour of an alignment, namely referring to "natural and legal person" in both regulations. As highlighted by other MSs during the CWP, it might be appropriate also to ensure an alignment with the EU framework, like the definitions of payer/payee in the PSD3/PSR proposals. LT (MS comments): The definitions should be harmonised across all relevant payments' regulations, including Payment Services Directive (PSD2/3), to ensure consistency and legal clarity throughout the regulatory framework. PSD, Art 4: *'payer' means a natural or legal person who holds a payment account and allows a payment order from that payment account, or, where there is no payment account, a natural or legal person who gives a payment order;*

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	'payee' means a natural or legal person who is the intended recipient of funds which have been the subject of a payment transaction. We are in favour in exploiting the same definitions in the DER and LTCR. LU (MS comments): LU: In our view the definitions should remain simple, general and neutral. We could also support further aligning the definitions by replacing "anyone" with *"any natural or legal person" in DER* We question the necessity to the add "irrespective *of its private or public nature" in the definition of payer and payee in LCTR.* *DER drafting suggestion* payee' means ~~anyone~~ **<u>any natural or legal person</u>** who is the intended recipient of funds which have been the subject of a digital euro payment transaction; 'payer' means ~~anyone~~ **<u>any natural or legal person</u>** who has a digital euro payment account and allows a payment order from that digital euro payment account; LCTR drafting suggestion: 5. 'payer' means any natural or legal person, **~~irrespective of its private or public nature,~~** who makes a payment in euro cash; 6. 'payee' means any natural or legal person, **~~irrespective of its private or public nature,~~** who is the intended recipient of funds which have been the subject of a payment transaction in euro cash; NL (MS comments):

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	NL comment: We have no strong feelings on alignment of the definitions of payer and payee and could support either outcome. PT (MS comments): We do not see a need for alignment of these definitions between both Regulations. In our view, considering the specificities of the digital euro, it would be more adequate to promote alignment with the definitions included in PSD2 (or giving the current review of this Directive, in PSR/PSD3). The definitions of "payer" and "payee" in the DER should include a reference to "natural or legal person who holds a digital euro payment account". RO (MS comments): Yes, we see the benefit of aligning the definitions between the two regulations. SI (MS comments): We would support aligning both definitions between LTCR and DER using the text as currently proposed in LTCR. SK (MS comments): We support the alignment of the wording referring to *natural or legal person, irrespective of its private or public nature.*
2) Penalties (Article 12 LTCR and Article 6 DER)	

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Q3. What are Member States' views on the above issues?	AT (MS comments): We oppose to re-introduce an obligation for MS to include penalties in the LTCR. The LTCR already includes national monitoring and reporting requirements and potential remedial measures with regard to the acceptance and access to cash, which is deemed sufficient. In fact, as for the DER penalty regime, we prefer a Member State option as well, which would allow an alignment between both regulations and ensure an equal treatment of physical and digital legal tender. Initial investments and ongoing costs to ensure an effective sanction regime of the dEUR legal tender status appear disproportionate compared to expected gains. In our view, the widespread acceptance and usage of the dEUR will depend on other, much more relevant, aspects of the DER (distribution, fees, technical features) that cannot be compensated by a sanction regime. BE (MS comments): We agree that both texts should oblige MS to provide for effective penalties sanctions. BG (MS comments): We are on the view that DER penalties shall apply. Chapter 3 and art. 17 are prerequisites for the mutual acceptance of the DE. CZ (MS comments): *We do not have any objections.* DE (MS comments):

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	• DEU supports applying the “may” provision both in Article 12 LTCR and also in Article 6 DER. • We should avoid excessive burdens for public administration; monitoring, investigating and prosecuting such minor offences would incur high administrative costs; require a lot of staff which would no longer be available for other tasks • Monitoring the compliance with acceptance of digital euro could be even more complex and burdensome since regarding a digital euro, specific “online investigations” would be necessary in order to supervise the acceptance of digital euro online. • Potentially, burdensome and bureaucratic sanctioning regimes might run counter to the simplification agenda of EU COM. • In addition, we question the necessity of such obligatory sanctions, as in Germany – regarding euro cash – the acceptance of cash is very high irrespective of a mandatory obligation to accept cash. • Penalties could be perceived as forcing the digital euro upon people. • Therefore, we call for a closer alignment of the two regimes, i.e. to transpose the ‘may’ provision also to Article 6 of the DER. **Drafting Proposal:** Article 6 DER *The Member States whose currency is the euro ~~shall~~ **may** lay down the rules on penalties applicable to infringements of Chapter III and Article 17 and shall take all measures necessary to ensure that these rules are implemented, including the power of competent authorities to access the necessary data.* EE (MS comments):

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	EE: We strongly prefer "may" in both Regulations. It is essential to ensure maximum flexibility for Member States in determining the level, type and procedure of penalties. EL (MS comments): EL: We are of the view that both Article 12 LTCR and Article 6 DER should require MS to lay down rules and effective, proportionate and deterrent penalties applicable to infringements of the respective legal tender provisions. In all the written procedures during the LTCR discussions, we had argued that sanctions would be necessary to ensure its effective application, as penalties are important enforcement tools. In our view, allowing MS discretion in setting penalty rules risks fragmentation. ES (MS comments): We would like to know if there are already other EU legal texts foreseeing a "may" provision for penalties or if a "may" provision in this text would set a precedent. In principle we do not strongly oppose to a "shall" provision. In any case, we see there can be different ways to enforce mandatory acceptance of cash and D€ and to enforce provisions on compensation for the D€. **In the end what matters is that the obligations of the Regulation are complied with. Member States should have flexibility to determine how to ensure this**. Also, we have to bear in mind that the penalties regime (including the types of sanctions and authorities designated for complying with the obligations) could be different for mandatory acceptance of cash than from mandatory acceptance of D€ and also they could be different for mandatory acceptance than for cap fees, given the difference of the obliged entities and of the protected person (mandatory acceptance is mainly introduced to protect consumers whereas cap fees aim to protect merchants).

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	FI (MS comments): Penalties may be different, current wordings are ok for us. FR (MS comments): First of all, before thinking about the penalties imposed on the legal tender of cash and the digital euro, we need to imagine how these obligations will be controlled and imposed by the States on the citizens of the Union. Success depends on the voluntary cooperation of our citizens. We will not be able to increase the resources devoted to controlling legal tender. So let's bear in mind that this is a relatively minor task for the Member States and let's adopt a flexible approach. In France today, the legal tender status of species is very well protected and very few shops refuse to sell species because they are responding to consumer demand. But it does happen and we find it hard to prosecute. Public prosecutors generally don't prosecute. For both subjects, legal tender is both a legal obligation and, above all, official support from the public authorities in the Member States and the European Union. We therefore support a flexible framework and alignment between the two texts: Member States have the flexibility to define and apply sanctions or not, depending on the local context. HR (MS comments): We find that obligation in the Article 6 of DER, to lay down the rules on penalties applicable to infringements of Chapter III and Article 17, should stay in this Article as "shall" provision and not "may". As it is stated in the PL PRES Discussion Note we agree that this obligation is needed in order

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	to ensure their effective application. Administrative inspections and the possibility of sanctions are needed. As we emphasised during previous CWP meetings, in addition to Chapter III and Article 17, it is necessary to specify other provisions of the Proposal of the Regulation (that is, other obligations of PSPs) that require supervision, the competent authority and associated penalties, and are not covered by PSD/PSR. For example, Art. 13. paragraph 4 of the Proposal, which prescribes the PSP's obligation to provide digital euro users with waterfall or reverse waterfall functionality, is prescribed in Chapter IV, and no comparable PSP obligation/service can be found in the PSD/PSR. Therefore, we believe that Article 6(1) should prescribe that Member States whose currency is the euro shall lay down the rules on penalties applicable to infringements, not only of Chapter III and Article 17 but also for other provisions (obligations of the PSPs) of the Proposal that are not covered by PSD/PSR. Beyond the obligatory versus voluntary nature of the respective penalty regimes, there are further differences that may or may not warrant alignment, as further detailed in the Annex. One such possible point of alignment would be to transpose the formulation “Member States whose currency is the euro” from Article 6 DER to Articles 9 and 12 LTCR. Another difference is the explicit reference to “the power of competent authorities to access the necessary data” in Article 6 DER, which may, however, be justified by the digital versus analogue nature of the digital euro and cash. Croatia advocates for the establishment of penalty regulations in the LTCR as they serve as an additional mechanism to guarantee consistent handling of cash across member states of the euro area. IE (MS comments):

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	IE supports the wording of article 12 of the LTCR. The introduction of penalties for any infringements of the LTCR at a national level should be a Member State competency and "in accordance with appliable national law". Therefore, the decision to apply or set any penalties should remain the gift of the Member State and the wording of the LTCR should reflect this. Preferences regarding cash use vary among Member States, and national competent authorities should have the ability to apply penalties in a manner that reflects national preferences on cash use. The digital euro, in contrast, is a new form of cash, and its introduction will be uniform across the euro area. Article 17 of the DER considers the fees that can be applied to digital euro services. As discussed at previous Working Party meetings, it is essential to the success of the digital euro that fees associated with the digital euro are uniformly applied across the euro area and any infringements or incorrect application of fees would be detrimental to its success. Therefore, the use of the word "shall" is more appropriate in the DER. IT (MS comments): We are among those MSs that already have a penalty for unjustified refusals of payments in cash. Comparing the two regulations, we agree that: i) it would be unusual to have a penalty for the refusal of digital euro, and not to have it for the refusal of cash. Therefore, generally speaking, an alignment is necessary; ii) establishing general obligations on the acceptance of digital euro and cash, without providing proper sanctions in case of breach of those provision, would not achieve the result of protecting the legal tender of the single currency; iii) as the CLS have underlined during the CWP, according to the Treaty each MS is already obliged to adopt all measures of national law necessary to implement legally binding Union acts (art. 291 TFEU). Therefore, a "may" provision would not exclude the obligation for the MSs to have a national sanction. On the other hand, a "may" provision would

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	make the obligations of the MSs unclear when adapting national legislation to the regulations. **Therefore, we support to have a "shall" provision in both regulations.** LT (MS comments): We are in favour of including a mandatory penalty regime in the DER, as this represents a standard provision in EU legislative acts. In our view, such a mechanism is essential to ensure effective implementation of the digital euro regulation. The digital euro will serve as an additional means of payment issued by the central bank. While its use by the payer will not be obligatory, it is important to ensure that end-users retain the freedom to always choose their preferred method of payment. For the purposes of alignment with LTC and DE regulations, penalty regime in LTCR could be made obligatory as well (using "shall' instead of "may"). LU (MS comments): LU: It has to be mentioned that, in LU the non-acceptance of cash by merchants already constitutes a criminal offend according to national law. While the imposition of mandatory sanctions might seem like a straightforward approach aimed to increase adoption rates for the digital euro or to ensure strengthening the role of cash, it often fails to account for the unique socio-economic and political landscapes across different MS. In the case of the digital euro, introducing a sanctions regime might have negative, undesired effects. Penalties do not inherently guarantee widespread acceptance or trust in a new means of payment. In fact, imposing penalties could exacerbate resistance and foster a negative perception among the public. The digital euro requires a foundation of trust and voluntary adoption to succeed. Forcing acceptance through penalties

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	could undermine this trust and lead to adverse outcomes, such as reduced public confidence and increased skepticism. Therefore, we advocate for an optional national sanctions regime and for maintain the may clause in both texts. NL (MS comments): **NL comment:** We strongly believe that the penalty regime should be optional in both regulations, for three reasons. • First, non-compliance with mandatory acceptance is a civil matter. It can and should be handled in a civil court. • Second, parties in the payments sector, such as PSP's, banks and the Dutch Central Bank, engage with each other on a regular basis to discuss the Dutch payment landscape. The discussion between all parties involved have been institutionalized and have led to cooperation on an inclusive and accessible payments landscape. In general, we prefer engaging in discussions within this institutionalized setting before considering regulatory action or laying down penalties. • And third, a penalty regime would require investments in administrative capacity. There would need to be new departments and personnel to handle cases. This would be disproportionate and does not align with the Commission's efforts on decreasing administrative burden. Therefore, for both these regulations, we strongly prefer to develop a penalty regime as an option. We believe that we can comply with our Treaty obligations to appropriately enforce EU law without a mandatory penalty regime.

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	If a penalty regime becomes mandatory under one regulation (such as DER), we still prefer keeping it optional under the other (such as LCTR). In other words, we would be opposed to alignment in this case. PT (MS comments): We oppose converting Article 12 of the Legal Tender of Cash Regulation into a "may provision", considering the reasons we previously highlighted, which are also reflected in the Discussion Note prepared by the PL Presidency. For this reason, we would prefer the alignment of Article 12 with Article 6 of DER. RO (MS comments): We feel that the two regulations should be aligned with respect to the obligations that arise out of them, and therefore we support having "may" instead of "shall" in the DER as well. SI (MS comments): We fully agree with the interpretation that an obligatory penalty regime, which is indeed more or less standard clause in many Union and national acts in order to ensure their effective application, would be best suited to ensure effectiveness of the legal tender status of either cash or the digital euro (homogeneously on Union level). Which is why in Slovenia we intended in any case to foresee provisions on sanctions in an implementing act on a national level, even if the provisions of LTCR would only state that Member States **may** lay down the rules on penalties. With this in mind and in the context of aligning both proposals LTCR and DER **we support that both regulation would require Member States (shall) to lay down the rules on penalties**. SK

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	(MS comments): We have a preference for "shall" in both regulations. MSs are obliged to ensure the enforcement of the regulations anyway, we do not see a reason for voluntary penalty regime.
Q4. Do Member States wish to align other parts of Articles 9 and 12 LTCR and Article 6 DER mentioned in the Annex?	AT (MS comments): No. BE (MS comments): Yes, alignment should be considered. BG (MS comments): We do not consider any at the time being CZ (MS comments): *We currently have no strong position.* DE (MS comments): • Regarding the formulation '**Member States whose currency is the euro' in Article 6** DER, we wonder whether this legal understanding might already be ensured by the legal basis, i.e. Article 133 TFEU. • We are open to listen to arguments why this should be maintained in Article 6 DER.

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	• Otherwise, our tendency would be to remove the term from Article 6 DER • In our understanding, the explicit reference to “**the power of competent authorities to access the necessary data” in Article 6 DER**, appears justified by the digital versus analogue nature of the digital euro and cash. • However, as set out under Q3, the introduction of penalties should be left to MS’ discretion. • We would like to recall the drafting proposal by the ESP non-paper which requested to e**xclude B2B transactions in Article 9 (d)**; this should be maintained. • **Competent authorities:** • We would support aligning the two provisions and apply the wording of Art. 6 DER to Article 9 (1) LTCR. • **Art. 9 (1) LTCR** refers to ‘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’. Partly, unclear what is meant by ‘*required powers…over cash-related market activities*’. • As opposed to Article 6 (1) DER which simply refers to ‘Member States […] shall designate one or more competent authorities to ensure compliance with Chapter III and Article 17’. • Please see our drafting proposal concerning Art. 9 (1) LTCR in the drafting proposal for the LTCR. • **Article 7 (4) DER**: ‘In accordance with the acceptance at full face value of the digital euro, the monetary value of digital euro

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	tendered in payment of a debt shall be *equal to the value of the monetary debt.*' • Why should the digital euro be equal to the value of the monetary debt? We would welcome clarifications how to understand this provision. To be clear, we do not question the underlying ratio of this provision. However, we wonder about the legal clarity of the wording and are concerned about possible diverging interpretations. We don't not consider this to be merely a question of legal proof-reading but would rather welcome a wording that is more clear. • **Article 4(4) LTCR and Article 7 (5)** both state that '…a payer shall be able to discharge himself from a payment obligation by **tendering digital euro to the payee**.' • We have concerns regarding this provision. • Whether or not the mere 'tendering' of cash or digital euro would legally discharge a payer from its payment obligation might differ amongst the legal systems in the Member States and relates to questions of private law. • The mere tender (offer of performance, e.g. simply offering to the payee that the cash may be picked up at the residence of the payer instead of handing over to the payee the cash) is – under German law – not sufficient for discharging the debtor. In addition, it is mandatory that the performance is also rendered, see sec. 362 (1) German Civil Code. • Therefore, the formulation in the text should be of a more general nature allowing all Member States to accommodate such rules in their respective legal systems. **Drafting Proposal**: Article 7 (5) DER

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	"In accordance with the power of the digital euro to discharge from a payment obligation, a payer shall be able to discharge himself from a payment obligation ~~by tendering~~ ***in*** *digital euro ~~to the payee~~* ***in accordance with applicable national law****.* Please see also our drafting proposal concerning Art. 4 (4) LTCR in the drafting proposal for the LTCR. EL (MS comments): EL: We believe that such alignment of the parts of Article 9 and 12 LTCR and Article 6 DER as described in the note and mentioned in the Annex is not strictly necessary, but we would not object to it. ES (MS comments): **First, regarding the explicit mention to member states "whose currency is the euro"** in art. 6 DER, it was introduced during our presidency in the DER to emphasize that the obligations of mandatory acceptance and cap fees only apply in the euro area. This also happens in the LTCR. We are unsure whether it is necessary to make this reference, given that the Regulation has a legal basis of art. 133 TFEU, and is only compulsory for Member States whose currency is the euro. - We see that the recitals of the Regulation refer to MSs "whose currency is the euro" and MSs "whose currency is not the euro" (in recitals 19, 29 and 43 there should be a reference to MSs "whose currency is the euro" to make sure it is consistent with the rest of the recitals) - However, in the legal text, when it says MSs it refers only to MSs whose currency is the euro, but it is not always consistent, sometimes it does specify that it is MSs whose currency is the €. For instance: In art. 6 it just talks about MSs, in article 13 when

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	talking about the D€ users it specifies that it is MSs whose currency is the €; article 14, in the title specifies it refers to MSs whose currency is the euro, but then the article itself just refers to MSs. Article 16 makes the distinction between MSs whose currency is and those whose currency is not the €. Chapter VI refers to MSs whose currency is NOT the euro. Article 40 just refers to MSs to talk about MSs whose currency is the euro. All in all, we think it could help clarify the text to be consistent and specify throughout the entire text when the text applies to MSs whose currency is the euro or to MSs whose currency is not the euro. Our opinion in this regard is nevertheless not very strong and we rely on the CLS to determine what is legally more appropriate in these type of texts. Also, we wonder if maybe in the definitions there could be a reference to "member state" stating that for the purposes of this regulation member state is a MS whose currency is the euro. In the LTCR we see that: - Recitals sometimes talk about MSs whose currency is the € and sometimes just about MSs, to refer only to those whose currency is the euro. Maybe it could be desirable to have consistency in this regard. - The text just mentions MSs and it always refers to MSs whose currency is the euro. Maybe it could be desirable to have a definition of member state for the purpose of the Regulation. Again, we rely on the CLS. Second, regarding the possibility of NCAs to access all necessary data to enforce the obligations laying rules on penalties, we believe that there should not be an asymmetry between DER and LTCR. The same way this power is included in Article 6 DER, it should be included in Article 12 LTCR FI (MS comments): No need, because of inherent differences.

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	FR (MS comments): France is in favour of a common approach between the two texts. It is therefore in favour of incorporating Articles 9 and 12 of the LTCR into Article 6 of the digital euro. We have doubts about the mention of access to data in the 'digital euro' text. Alignment would make it possible to delete the vague and broad reference and thus ensure consistency with the legislation on personal data. A proportionate approach that complies with the GDPR is necessary in terms of personal data law. HR (MS comments): Croatia agrees with the alignment of Articles 9 and 12 with the Article 6 DER. We agree with drafting suggestions proposed by the ES PRES in the DER, meaning to add the formulation "Member States whose currency is the euro". IE (MS comments): Yes, IE considers that the other parts of Articles 9 and 12 of the LTCR and Article 6 of the DER should be aligned for consistency. IT (MS comments): We do not have a strong view on deleting or retaining the wording "whose currency is the euro". We prefer to keep the wording "the power of competent authorities to access the necessary data" in Article 6 DER. LT (MS comments):

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	We support that there should be alignment in single currency area between two different forms of the same currency. With regards to “the power of competent authorities to access the necessary data” we are open to the discussions due to different nature of the two forms of the euro currency, i.e. digital and analogue. The formulation “*Member States whose currency is the euro*” might be incorporated in the corresponding provisions of LTCR, to have alignment with DER. NL (MS comments): **NL comment:** We can support (a) deleting ‘MS whose currency is the euro’ from Art. 6 DER and (b) including the power of competent authorities to access data in both regulations. We do not see opportunities for further alignment. PT (MS comments): Specifically, regarding the aspects referred by the PL Presidency in the Discussion Note, we have the following comments: — On the segment “whose currency is the euro”, we agree that this reference is not necessary from a legal perspective, and we highlight that this aspect is also safeguarded in the Legal Tender of Cash Regulation in new Article 2(3); — Regarding the reference to “the power of competent authorities to access the necessary data”, we agree with maintaining the current misalignment. RO (MS comments): We agree, in order to align the nature of the obligations regarding the acceptance of the Euro Cash and DE, and also to ensure that the competent authorities have necessary power to access the relevant data.

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	SI (MS comments): In our view it would be also feasible **to align (in both LTCR and DER) the explicit reference to the "power of competent authorities to access the necessary data"** in order for competent authorities to properly exercise their obligations. SK (MS comments): No strong view on "Member States whose currency is the euro". Reference to "the power of competent authorities to access the necessary data" in DER is justified by digitl nature of digital euro, we do not see a reason to align LTCR with such wording.
3) Title and definition of legal tender (Article 4(3) LTCR and Article 7 DER)	
Q5. Do Member States agree to align the titles of both Regulations and to replace the word "settlement" in Article 4(3) of the LTCR with "payment"?	AT (MS comments): Yes, we agree. BE (MS comments): Yes, we agree. CZ (MS comments): *This will be subject to further assessment.*

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	DE (MS comments): • We support the alignment of the two Proposals. • The reference to 'payments' in Article 7 (4) DER seems more appropriate to us, as reflected also in the COM Recommendation of 22 March 2010 (reference to 'payments') • We support aligning the titles of Articles 4 LTCR and 7 DER to be 'Legal Tender' EE (MS comments): EE: We agree with the term "payment". EL (MS comments): EL: Yes, we agree with the proposed alignment ES (MS comments): We agree with changing the title of art. 7 DER from legal tender status to legal tender, to match with the title of Art. 4 LTCR. We also agree with replacing the word settlement by payment in article 4(3) LTCR. FI (MS comments): Ok FR (MS comments): Yes, France is in favour of this alignment.

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	HR (MS comments): Yes, we support to align the titles in Article 4 of LTCR and Article 7 of DER, and to replace the word “settlement” in Article 4(3) of the LTCR with word “payment”. IE (MS comments): IE supports this proposal as it promotes consistency and is aligned with the Commission Recommendation of 22 March 2010. IE notes that surcharges could be applied to the payment method as opposed to the settlement of the payment. IT (MS comments): Yes, we agree. LT (MS comments): Titles "Legal tender" (LTCR) and "Legal tender status" (DER) should be aligned, and we agree to replace "settlement" with "payment" in LTCR. LU (MS comments): LU: yes NL (MS comments): **NL comment:** We can support the proposed alignments regarding the words ‘settlement’ and ‘payment’. PT

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	(MS comments): Yes, we agree with the PL Presidency suggestions. RO (MS comments): We agree with aligning the titles and replacing "settlement" with "payment". SI (MS comments): We agree to align the titles of respective Articles in both Regulations to “Legal tender” and also to replace the word “settlement” in Article 4(3) of the LTCR with “payment”. SK (MS comments): We support the alignment.
4) Exceptions to the principle of mandatory acceptance (Article 5(1)(b) and (c) LTCR and Article 9(d) and (c) DER)	
Q6. Are Member States in favour of retaining the wording “in accordance with applicable national law” in Article 5(1)(b) LTCR, or is this unnecessary, given the new approach proposed by the Polish Presidency with a new standalone article on ex ante unilateral exclusions of cash and should therefore be removed in Article 5(1)(b)?	AT (MS comments): The term “applicable national law” ensures that the concept of “agreement” and the conclusion of a contract is interpreted in line with the Member States’ own civic law framework. This is not ensured in the new Article 4a LTR, hence it shall be kept in Art 5 (1) (b) LTR. BE

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	(MS comments): The sentence 'in accordance with applicable Member State law' seems to open the door to circumvention of the regulations, which is not acceptable. It was introduced as part of an earlier compromise text, but since another suggested compromise is now being proposed and the situation is clear, we believe it would be appropriate to delete it. BG (MS comments): We are on the view that such a change will not bring any additional value. CZ (MS comments): *If it is made certain (new art. 4a of the LTCR) that the prohibition of ex-ante unilateral exclusion of cash applies to specific cases (B2C, in public premises), we see no need for national exceptions. "In accordane with applicable national law" can therefore be considered redundant.* DE (MS comments): • We strongly encourage to introduce in Article 9 (d) DER a reference also to 'in accordance with applicable national law'. • Article 5 (1) (b) DER should mirror the (correct) understanding developed in discussions regarding the LTCR. Also, in the LTCR, it is highly important to keep this reference to 'in accordance with applicable national law'. • Neither the new Art. 4a LTCR nor Article 9 (d) DER have any impact on the very relevant issue how contracts are being concluded under national law. Irrespective of the two proposals, the voluntary nature, the existence of an agreement on the use of a

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	different means of payment or the essential parts forming an agreement should be determined in accordance with the applicable national law of contracts. • The wording "in accordance with applicable national law" clarifies that in line with CJEU's ruling in Hessischer Rundfunk (C-422/19 and C-423/19) the question whether an agreement on a different means of payment has been reached is determined by the contractual law of the respective Member State. Hence, the reference to 'in accordance with applicable national law' enhances legal clarity. • The reference also provides merchants with foreseeability and reassures them that the existing legal framework on how to conclude contracts will not be altered by these Proposals (except for the specific provisions in Article 4a LTCR and Art. 10 DER). • Importance of this guiding reference was also acknowledged by the CLS in previous meeting on the LTCR. • Therefore, this sentence and the underlying legal assumption remains of high importance to us. **Drafting Proposal** Article 9 (d) DER *By way of derogation from Article 7(3) and Article 8, a payee shall be entitled to refuse digital euro in any of the following cases: […]* *(d) where, prior to the payment, the payee has agreed with the payer on a different means of payment* ***in accordance with applicable national law****, subject to Article 10.* EE (MS comments): EE: We consider it important to retain the phrase 'in accordance with applicable national law'.

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	EL (MS comments): EL: We believe that the wording "in accordance with applicable national law" in LTCR is not necessary given the new approach proposed by the PL Presidency and that it should therefore be removed, at least from the enacting terms (i.e. Article 5(1)(b)). There is a risk that this phrase could be too broadly interpreted by some MS, that could lead to fragmentation in the approaches taken. ES (MS comments): We understand that payer and payee will agree on a means of payment in accordance to national law regardless of whether this is stated or not in the text, since contractual law is a MS competence. We do not oppose to the inclusion, in any case we do not want that this leads to unintended consequences, with a fragmented interpretation of the clause. We value the preferences of the CLS in this regard. FI (MS comments): Yes (at least in LTCR) FR (MS comments): France thanks the Presidency for its proposal for a new approach which removes the reference to national laws on ex ante refusals to accept species. It is in favour of this proposal: the reference can therefore be removed from Article 5(1)(b). HR (MS comments):

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	Croatia is of the opinion that the expression "in accordance with applicable national law" in Article 5(1)(b) LTCR is not necessary and it should be deleted. We find that wording "in accordance with applicable national law" should not be added because it is not appropriate for the Article 9 (d) of the DER. With or without the phrase 'in accordance with applicable national law', contractual relations will necessarily be interpreted based on national law. For example, whether the exclusion of cash was unilaterally imposed by a retailer or service provider, i.e. whether the express agreement of the payer (consumer) existed in a situation will also be assessed based on national law which will consequently lead to fragmentation in the approaches taken by national courts. IE (MS comments): IE supports the retention of the wording "in accordance with applicable national law" throughout the LTCR, including Article 5(1) (b). The draft prepared by the Presidency specifically notes that the LTCR applies to transactions where the payer is present. IT (MS comments): We continue to have a preference to keep the sentence *'in accordance with applicable national law'* for the sake of clarity. In any case, should this sentence be deleted, nothing would change in practice. In fact, as this sentence refers to the concept of "agreement", it would only be possible to interpret it in line with national law. LT (MS comments): We prefer the removal of reference to the applicable national law from LTCR.

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	LU (MS comments): LU: the reference to the national law can be kept. NL (MS comments): **NL comment:** We strongly favour retaining the clause 'in accordance with applicable national law'. We believe this clause is the most important in LCTR, as it links the regulation to national law, giving appropriate room to established MS practices. Retaining this clause gives an appropriate position to national law, while keeping the benefits of the PCY's approach with a new standalone article on ex ante unilateral exclusions of cash. In the absence of the clause, the provisions would be interpreted uniformly by the ECJ, which would mean that the inherent differences in payment cultures between Member States are not appropriately catered to. PT (MS comments): We believe the reference to "*in accordance with applicable national law*" is unnecessary in view of the approach proposed by the PL Presidency and, consequently, should be removed from Article 5(1)(b) of the Legal Tender of Cash Regulation. RO (MS comments): We support retaining the wording "in accordance with applicable national law". SI

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	(MS comments): We never supported the inclusion of references to applicable national law in the LTCR as this would create grounds for introducing national practices regarding mandatory acceptance of cash and would likely lead to heterogeneous cash acceptance rules/practices across the Euro Area (EA) countries. Taking account of the new approach proposed by the PL PRE with a new standalone article on ex ante unilateral exclusions of cash and in view of aligning both Regulations (LTCR and DER) in this aspect, **we support deleting the reference to applicable national law from the LTCR.** SK (MS comments): We have no strong view on retaining the wording. We in general support the broader prohibition of the unilateral exclusions, applicable also to the B2B transactions.
Q7. Do Member States agree that the exception of "payees that are natural persons acting in the course of a purely personal or household activity" as listed in Article 9(c) DER does not need to be mirrored in the LTCR and that it should therefore be deleted from the LTCR?	AT (MS comments): We prefer that the exception to the principle of mandatory acceptance of euro banknotes and coins in a purely personal or household activity, formerly proposed Art. 5(1)(c), should be kept in the text. We strongly question how such a provision should be monitored or sanctioned in any case. BE (MS comments): It does indeed seem not so important to mirror this in the LTCR. BG

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	(MS comments): We consider that it is unnecessary to mirror the text. CZ (MS comments): *Generally, we support the contractual freedom.* DE (MS comments): • We wonder what would be legal tender if a natural person in a private capacity could refuse accepting euro cash? Would there be a default or would this mean that two private individuals would always be free to agree on a different means of payment? • Currently, regarding private individuals in a private capacity, accepting euro cash would always be the fall-back option. Of course, two private persons might agree on another means of payment. • Thus, we agree that Article 9 (c) DER does not need to be mirrored in the LTCR (and also agree with the deletion in Article 5 LTCR). EE (MS comments): EE: We agree with not mirroring in the LTCR. EL (MS comments): EL: Yes, we agree that the exception of “payees that are natural persons acting in the course of a purely personal or household activity”, as listed in Article 9(c) DER, should not be mirrored in LTCR and that it should therefore be deleted from it. This has been our firm position in all the written procedures during the LTCR discussions. Our main argument was that if this exception is introduced, apart from DER, also in LTCR, it will

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	lead to the payer being deprived of the possibility to pay with central bank money. ES (MS comments): Yes, we agree. It is a common way of settling debts among individuals and given that they are on equal grounds. They have the possibility to agree on a different means of payment if they desire to do so. In any case, we see that enforcement and monitoring can be complex, so MSs should be provided flexibility in this regard. FI (MS comments): Yes FR (MS comments): Yes, as the Polish Presidency points out, cash is a means of payment that has always been used between natural persons. The clarification of the 'Digital Euro' regulation is due to the novelty of the digital euro and does not apply to cash. HR (MS comments): We agree that the exception of "payees that are natural persons acting in the course of a purely personal or household activity" as listed in Article 9(c) DER does not need to be mirrored in the LTCR and that it should therefore be deleted from the LTCR. IE (MS comments): IE does not support the deletion of article 5(1)c from the LTCR. IE is opposed to the proposed deletion of article 5 (1)c that exempts transactions between natural persons in the course of their personal or household business from the obligation to

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	accept cash. IE's opposition to this proposal is based on four concerns. While the AML regulation does not apply to payments between natural persons in the course of personal or household activity, the payee would be subject to AMLR if they, for example, sell their car for cash and then seek to lodge over €10,000 to their bank account. The general public may not be aware of the requirements of the regulation. Secondly, monitoring of these types of transactions would be difficult in practice. Thirdly, for a competent authority to take any kind of enforcement action where a natural person refuses to take cash simply isn't feasible. Finally, a natural person has no method of checking whether the cash they receive is counterfeit or otherwise and such an obligation may expose natural persons to increased risk of handling counterfeit banknotes.. Consequently, IE also supports the retention of article 9c of the DER. IT (MS comments): We agree that this exception doesn't need to be mirrored, and we support its deletions from the LTCR. Indeed, the reason to keep this exception only in the DER is justified with the need not to force natural person to have the technical devices for accepting the digital euro. Clearly this problem would not arise with cash, so we support the deletion of this exception from the LTCR and maintaining it only in DER. LT (MS comments): We agree LU (MS comments): LU: As P2P payments become faster and easier (via the use of QR codes or proxies such as phone numbers) we should not continue to assume that cash is by default the natural means pf payment used by private households.

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	The obligation to natural persons to accept cash should be carefully considered, particularly in the broader context of the penalties regime. We are of the view that a regime emphasizing the voluntary nature of the acceptance of a payment method (cash or digital euro) would be more appropriate in the case of natural persons. Thus, in favour of mirroring the DER requirements also in LTCR. NL (MS comments): **NL comment:** Although digital methods are used more often in the Netherlands, we understand that cash is commonly used to settle personal debts. For the sake of compromise, we can support the wider scope of the LTCR that results from deleting the exception. However, it should be made clear that the monitoring and reporting obligations do not extend to these kinds of payments, as this would realistically be impractical and unnecessarily cumbersome. The same goes for penalties, if they are included in the Council's position. PT (MS comments): We prefer not to retain the exception of "*payees that are natural persons acting in the course of a purely personal or household activity*" in the LTCR. We consider that the reasons justifying its introduction in the Digital Euro Regulation do not apply in the Legal Tender Regulation. For instance, the digital euro will be an electronic/digital means of payment, requiring payers and payees to have an electronic/digital method for conducting transactions in digital euros, which is not the case with payments in cash. Additionally, we consider that this rule may be difficult to reconcile with national civil laws. RO (MS comments): We agree with not adding this exception to the LTCR.

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	SI (MS comments): **We do not see the need to have such exception to the principle of mandatory acceptance of cash listed in the LTCR**. Due to the fact that making a payment with digital euro would require both parties to have an appropriate technical solution at hand, we are of the opinion that differentiating provisions of both Regulations in this aspect are justified. **We therefore agree with deleting this exception from the LTCR**. SK (MS comments): Yes.
5) Prohibition of unilateral exclusion (new standalone article proposed by the Polish Presidency on ex ante unilateral exclusions of cash in LTCR, Article 10 DER)	
Q8. Do Member States agree that, in light of the new proposal by the Polish Presidency, there is no need to further align the provisions on the prohibition of unilateral exclusion in the LTCR and the DER, given the inherent differences between the two forms of public money?	AT (MS comments): We see no specific need for further alignment (but see our answer to Q9). BE (MS comments): Yes, we agree. BG (MS comments): Yes.

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	CZ (MS comments): *This will be subject to further assessment.* DE (MS comments): • We refer to our comments regarding Article 4a LTCR. • In our understanding, the legal approach adopted in Article 4a LTCR and in Article 10 DER is fundamentally different. While we remain rather sceptic about the approach adopted in Article 4a LTCR, we believe that Article 10 – purely from a legal perspective – is much more well suited to reach the desired policy goals. • Due to the different legal nature of the two approaches, we also believe that it is highly important to clarify that the way how to conclude a contract is subject to applicable national law. • This being said, maintaining these inherently different concepts, to us, rests on three key conditions: ○ First, the scope of Article 10 DER and Article 4a should be aligned as much as possible. The prohibition of contractual terms according to Article 10 DER should be limited to B2C transactions at the POI and in eCommerce. ○ The prohibition to use standard terms and contracts excluding digital euro might also extend to businesses that only accept credit transfers and direct debits at the POI. However, businesses that only accept credit transfers and direct debits **not initiated at the POI** (e.g. doctors, craftsmen) should be excluded from the scope of Article 9, irrespective of their size (see Q13) ○ Second, B2B transactions should be excluded from the scope of legal tender under the DER. We support the ESP proposal to include a new Article 9 (d) explicitly stating that in B2B transactions, acceptance of digital euro is not

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	mandatory. This should also be mirrored in Article 10 by clearly restricting its scope of application to B2C use cases. **Drafting Proposal** Article 10 ***<u>Where the payer is a consumer, p</u>***_ayees subject to the obligation to accept the digital euro_ ***at the Point of Interaction*** _shall not use contractual terms that have not been individually negotiated or commercial practices which have the object or the effect to exclude the use of the digital euro by the payers of monetary debts denominated in euro. Such contractual terms or commercial practices shall not be binding on the payer_***<u>, acting as a consumer</u>***_. A contractual term shall be regarded as not individually negotiated where it has been drafted in advance and where the payer has therefore not been able to influence the substance of the term, particularly in the context of a pre-formulated standard contract._ EE (MS comments): EE: We agree with the Polish Presidency approach. EL (MS comments): EL: We agree that, given the inherent differences between the two forms of public money and considering the new proposal by the PL Presidency, there is no need to further align the provisions on the prohibition of unilateral exclusion in the LTCR and the DER. ES (MS comments): We agree that it is not necessary that these provisions are fully aligned. Nevertheless, we wonder if the LTCR should as well state that standard

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	terms and conditions are considered a unilateral exclusion. We understand that it might not be necessary having limited the prohibition of unilateral exclusions in the LTCR to B2C payments in POS that are not recurring. It is mainly no cash signs what worries in these scenarios and seems more difficult to imagine how in that case standard terms and conditions could be offered to be signed by the customer. In any case, we wonder if it would make sense to include it providing a higher parallelism with the provisions in the DER. FI (MS comments): Yes. FR (MS comments): We agree with the current wording. HR (MS comments): We agree that, in light of the new proposal by the PL PRES, there is no need to further align the provisions on the prohibition of unilateral exclusion in the LTCR and the DER, given the inherent differences between the two forms of public money. IE (MS comments): IE supports the proposed new article 4a of the LTCR and agrees with the Presidency position on the inherent differences between cash and the digital euro. IT (MS comments): Yes, we agree. LT

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	(MS comments): We agree LU (MS comments): LU: We agree that no further alignment is needed based on the inherent differences between cash and digital euro. NL (MS comments): **NL comment:** We can support the PCY's proposal. PT (MS comments): We agree with the PL Presidency that further alignment is not needed given the inherent differences between the two forms of public money. RO (MS comments): We agree. SI (MS comments): **In principle** and ideally **even these provisions on the prohibition of unilateral exclusions in the LTCR and the DER should be aligned**. One aspect where LTCR may justifiably differ from DER is when paying for goods or services purchased at a distance, including online, which is in any case separately provisioned in LTCR, whereby even in this aspect there are viable solutions to enable customers / payers to discharge their payment obligation in cash. In other aspects we do not see reasons that would warrant differentiating between payment options for the customers / payers – both payment options, being the legal tender, should be available

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	to customers to choose the preferable means of payment and ensuring this should not be subject of convenience. The new compromise proposal by the PL PRE on prohibition of unilateral exclusions in the LTCR may be understood as a step forward, nevertheless **in our opinion the scope of this prohibition has now been set too narrow. The proposal leaves too much room for different interpretations and might lead to heterogeneous cash acceptance rules/practices across EA countries.** Concretely, as it reads now, a clear prohibition of ex-ante unilateral exclusions of payments in cash is limited only to transactions between retailers or service providers and customers / payers, **leaving any natural or legal persons in their public nature (like public administration offices or other similar entities) completely out of the picture** (meaning these entities would be entitled to unilaterally exclude cash payments – heterogeneously across EA countries). **In our opinion public administration offices and/or similar entities + companies providing gas, water, electricity and other similar services should also be prohibited to exclude cash as a payment option. Even more so, as these entities are normally / more often than not a sole provider of the service and customers have no / very limited possibility to choose between providers with suitable payment options for them**. Furthermore, it is **in our opinion also arguable that such prohibition of unilateral exclusions of cash would be limited by referring to retailers' or service providers' public premises and that the payer is physically present**. The purchase of goods and services at a distance, including online is in any case separately provisioned in LTCR and **mentioning physical presence of a payer in this Article 4a or referring to retailers' or service providers' public premises, whereby the term "public premises" is not further determined, only brings further confusion.** In Slovenia, we currently have a strict understanding of the legal tender status of euro banknotes and coins (cash should be accepted everywhere and by everyone) which is why **we disagree with such unclear / vague provisions**.

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Q9. Do Member States wish to keep Article 10 DER unchanged, or do they support excluding B2B payments from the scope of Article 10?	AT (MS comments): We agree for a possibility to unilaterally exclude payments in the dEUR based on terms and conditions for B2B transactions. The main objectives, i.e. ensuring the wide usage of dEUR and addressing power imbalances between merchants and consumers, are met with a B2C-only provision in our perspective. BE (MS comments): It seems to make sense to exclude B2B transactions from Article 10. BG (MS comments): At the moment we are not able to assess the impact of that change. CZ (MS comments): *This will be subject to further assessment. But in general, we support the contractual freedom.* DE (MS comments): • See answer to Q8. EE (MS comments): EE: We support keeping Article 10 DER unchanged. EL

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	(MS comments): EL: We wish to keep Article 10 DER unchanged, i.e. our preference would be to not exclude B2B payments from the scope of Article 10. In general, we disagree with any further restrictions on mandatory acceptance as this would weaken the digital euro's legal tender status. ES (MS comments): **Yes, we agree and we would go beyond and exclude B2B transactions from mandatory acceptance in art 9**. We believe that intervention via mandatory acceptance and fee caps should be limited based on the objective of the regulation and the role of the D€ as public good. - *B2B use cases should be possible but not imposed*. By excluding these use cases from mandatory acceptance, not only do we avoid the imposition but also it allows that, if businesses agree to use D€s, they are not subject to cap fees. Caps are only justified if there is mandatory acceptance. - *If B2B payments are not excluded from mandatory acceptance, if businesses wish to pay in D€* (do not agree to exclude it), then caps would apply, and we doubt that this would be a desirable outcome. In any case, if B2B transactions were to be maintained as mandatory acceptance cases, we would exclude them from article 10, which we believe should focus on protecting consumers. FI (MS comments): Keep unchanged. FR (MS comments):

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	France supports the exclusion of B2B payments from the scope of Article 10 of the DER because businesses cannot obtain digital euros. HR (MS comments): We do not support excluding B2B payments from the scope of Article 10. IE (MS comments): IE wishes to keep Article 10 unchanged, and does not agree that a digital euro exclusion should be provided for B2B payments. IE wishes to keep Article 10 unchanged, and does not agree that a digital euro exclusion should be provided for B2B payments. In the broad sense, exemptions could hurt digital euro adoption levels and usability. IE understands why an exemption should be provided for B2B's on cash it does not see the rationale in the context of digital euro which is a digital payment (similar to credit transfers) suitable for both reoccurring payments and high value payments. The digital euro provides an opportunity for businesses to save money on transaction costs and all business should be afforded the opportunity to benefit from this. IE– notes Article 9(d) which provides an exemption on the premise that the businesses' involved in the payment agree on the means of payment to be used, prior to the payment being made. IE notes that businesses who do not wish to be paid in digital euro could opt to agree an alternative payment method ahead of the sale. Additionally, IE would have a concern that if such an exemption were provided that businesses could move away from point of interaction (POI) payments which could lessen payment choices. This could impact customers as businesses who remove POI functionality no longer provide a "comparable means of payment" which would exclude them from digital euro acceptance as per the DER. IT (MS comments):

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	We have a preference to keep art. 10 unchanged. LT (MS comments): We are in favour to keep Article 10 DER unchanged. LU (MS comments): LU: For practicability reasons, we can support the exclusion of the B2B payments form the scope of Art 10. NL (MS comments): **NL comment:** Yes, we support excluding B2B payments from the scope of article 10. In our opinion, the digital euro should mainly be a payment means for consumers and the legal tender and mandatory acceptance of the digital euro should reflect this. We believe it fitting that the prohibition of unilateral exclusion should not be included in the scope of article 10. PT (MS comments): In line with our previous comments on this issue, we disagree with excluding B2B payments from the scope of Article 10 of DER. In any case, we consider that, at this stage, this should not be an obstacle to move forward with the digital euro file and, therefore, are flexible to accommodate a divergent view from the majority of Member States. RO (MS comments): We support excluding B2B payments from the scope of Art. 10 DER. SI (MS comments): We wish to keep Article 10 DER unchanged.

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	SK (MS comments): We support the mandatory acceptance of the Digital euro in B2B transactions.
6) Additional exceptions of a monetary law nature (old Article 6 LTCR and Article 11 DER)	
Q10. Do Member States believe that the "additional exceptions" provisions in the LTCR and the DER need to be aligned or do Member States believe that the differences between the two regulations are warranted and that Article 11 DER should be maintained?	AT (MS comments): The removal of Art 6 LTCR is supported. We believe that a different treatment is warranted as the dEUR is a new means of payment and additional exceptions of mandatory acceptance could be handled in a more flexible way pursuant to Art 11 DER. It is important that the Commission "shall" consult the ECB when preparing these acts. BE (MS comments): Yes, the differences between the two regulations are warranted. BG (MS comments): We consider that the differences between the two regulations in this regard are acceptable. CZ (MS comments):

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	We believe that there should be flexibility to include additional exceptions where necessary. DE (MS comments): • We believe that the two proposals should be aligned on this issue. • In the discussions on the LTCR, Member States had very clear views on this sensitive issue: Additional exceptions to the principle of legal tender are of such importance that they should not be taken at level 2. This seems to be a very far-reaching delegation of powers. • Given the political and practical relevance of such a decision to broaden or narrow the scope of legal tender shall be taken at Level 1 only. • Therefore, we believe that Article 11 DER should be deleted, as it is proposed with regard to Article 6 DER. EE (MS comments): EE: The differences between the two regulations are justified. The legal framework for the digital euro must be future proof to support innovation. Essential provisions (on the crucial elements of the digital euro) should not be delegated. EL (MS comments): EL: The “additional exceptions” provisions in LTCR and DER do not need and in fact should not be aligned. We believe that the differences between LTCR and DER are warranted in this respect, mainly due to the novel nature of the digital euro, and therefore that Article 11 DER should be maintained. ES

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	(MS comments): Art. 11 DER should be maintained to provide more flexibility due to the innovative nature of the D€ project FI (MS comments): No. FR (MS comments): Cash is a means known to the public and the cases in which it is used are well known. There is therefore no need for delegated acts from the Commission to provide for new exceptions. This is not the case with the digital euro, which is new. The differences between the two regulations may therefore remain. HR (MS comments): We find that the "additional exceptions" provisions in the LTCR and the DER do not need to be aligned, and that Article 11 in DER should be maintained, because this article prescribes that Commission can adopt delegated acts by which it will identify additional exceptions of a monetary law nature to the principle of mandatory acceptance. IE (MS comments): Article 11 of the DER should be retained to future-proof the regulation in light of possible changes in technology and the advent of new financial products. IE supports the deletion of Article 6 of the LTCR. Article 5 provides for exemptions to the mandatory exception of cash, and the regulation also provides for Member States to introduce additional regulations if required. IE would like to see that ability underpinned in an article in the main body of the regulation to ensure legal clarity in the future.

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	IT (MS comments): We support to maintain the differences between the two regulations, since digital euro will be a new form of the single currency that would justify a divergent approach. LT (MS comments): We agree that Article 11 DER should be maintained to ensure flexibility and adaptability to unforeseen circumstances that may arise due to the novel nature of the digital euro and rapidly evolving nature of the digital payments landscape. However, the same is not applicable to cash, therefore Art. 6 should not be added back to LTCR, differences between the two regulations are warranted. NL (MS comments): **NL comment:** We believe that the provisions on additional exceptions by the Commission do not need to be aligned. The inherent differences between the forms of public money warrant a divergence. PT (MS comments): For the moment, on the first part of this question, we have not identified the need for further alignment of "additional exceptions". In relation to the second part, we maintain our reservations about conferring to the COM the powers initially foreseen in Article 6 of the Legal Tender Regulation (and, hence, support its deletion). By contrast, we support retaining in the text Article 11 of DER, for the reasons provided by the PL Presidency in the Discussion Note. RO

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	(MS comments): We believe that the differences between the regulations are warranted and that Art. 11 DER should be maintained as is, as the DE might develop different use cases from euro cash, which might require support through involvement. SI (MS comments): We think that Article 11 DER should be maintained. SK (MS comments): We are of the view that differences are warranted by the novelty of the Digital euro project.
3. Other points only related to the digital euro	
1) Article 8 DER: Territorial scope	
Q11. Do Member States agree with the fact that Article 8 is necessary in view of the special characteristics of the digital euro and the existence of its online and offline use, or do they think that Article 128 TFEU could be replicated in the DER?	AT (MS comments): Yes, a clarification is deemed necessary. Especially the following is an important clarification: "the payer shall be entitled at all times to choose between an online or an offline digital euro payment transaction". BE (MS comments): We would indeed prefer keeping Article 8.

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	CZ (MS comments): *We consider it appropriate to retain Article 8 DER. However, the proper wording should be consulted with the CLS.* DE (MS comments): • We agree with the PCY's reasoning that Article 8 paras. 1 and 2 provide clarification with respect to the points of reference for the territorial scope of legal tender. • With a view to the two different modalities of use (i.e. online and offline), such clarification seems to be preferable over a replication of Article 128 TFEU in the digital euro regulation. • As the digital euro will not necessarily be construed as a banknote and the application of Article 128 TFEU might be questioned it remains necessary to explicitly determine the legal tender status of the digital euro, as it has been made in Article 11 of Regulation (EC) No. 974/98 with regard to coins. EE (MS comments): EE: We agree with the fact that Article 8 is necessary in view of the special characteristics of the digital euro and the existence of its online and offline use. EL (MS comments): EL: We agree that Article 8 is necessary in the DER in view of the special characteristics of the digital euro and the existence of its online and offline use. ES

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	(MS comments): **Yes, we agree art. 8DER is necessary and we want to maintain it**. There is value in knowing when a transaction is considered LT, especially in online transactions (offline, as well as cash, being in proximity, is more intuitive) **We support the criterion of the COM proposal**, based on the place where the payee is residing or established, since we consider that the main implication of legal tender is mandatory acceptance, from which also derives the application of cap fees. ○ A payer residing in the EA will receive basic digital euro services for free, regardless of whether the payment is made in or outside the EA (for instance a P2P payment to another D€ user or a P2B payment to a merchant accepting D€ outside the EA). ○ The merchant however, depending on whether the payment is legal tender or not will have to be obliged to offer this possibility or not and it will determine how much it will cost. It makes sense that only merchants established in the EA have the obligation and are therefore protected by the caps. On the other hand, Art. 2.3 LTCR also foresees territorial scope of LT for cash. To fully align with the wording of art. 8 DER, art. 2.3. of LTCR could say "payments of a monetary debt **<u>that take place</u>** within the EA". Some MSs explained concerns that outside of the territorial scope of the LT status, settlements in D€ would not have the power to discharge from a payment obligation. In any case, payments with private money outside the EA also do not have legal tender status and still are used to settle payments. We do not see a special problem in this regard. FR (MS comments):

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	Public money, and in particular its online and offline features, will have a major impact on the privacy of EU citizens. These are therefore political choices that must be made by the co-legislators. It is therefore important to retain Article 8. HR (MS comments): We support drafting proposal by the PL PRES stated in the Discussion note meaning that Article 8 is necessary in view of the special characteristics of the digital euro and the existence of its online and offline use. IE (MS comments): IE supports the PL Presidency's drafting proposal for Article 8 in view of the special characteristics of the digital euro. As previously stated, the digital euro should have legal tender status whether in online or offline mode. Article 128 TEFU does not reflect the flexibility or modes of operation of the digital euro and it is not appropriate to replicate it in the DER. IT (MS comments): We reiterate our legal concerns regarding article 8 on territorial scope. The PCY note does not address our comments and fails to explain what is the added value in having this provision, what would be the consequences if Art. 8 is deleted, why for online digital euro payments the regulation gives legal relevance to the place where the payee resides, what happens in terms of enforceability. In addition to the comments that we have already made in the past, we wonder if art.8 would have unintended consequences taking into consideration the discussions on the international use of digital euro. For instance, we do not see why a payment in digital euro made by an Italian payer to an Italian payee but performed when both payer and payee are

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	outside the euro area, should not be considered a payment with legal tender money – with all the consequences that this entails in terms of not recognizing that payment the power to discharge from a payment obligation. In addition, we have doubts about the possibility that the current wording of Article 8 might have unintended effects on the utility of the agreements for the international use of the digital euro. In particular, in the presence of an agreement pursuant to Articles 18 and 19 DER, the wording of Article 8 does not clarify whether a payment made to a payee outside the euro area (that has freely decided to accept digital euro) would be enough for the payer to settle the pecuniary obligation. Plus, in relation to the new paragraph 3 of Art. 2 LTCR, proposed by the Hungarian Presidency, we note that the Polish presidency has proposed amendments to make reference to Art. 128 TFEU; in our opinion the new proposed paragraph 3 of Art. 2 is unnecessary and should be deleted. The sentence proposed by the Hungarian Presidency (euro banknotes and coins shall have legal tender status for payments of a monetary debt within euro area) does not reflect Art. 128 TFUE. Therefore, we continue to believe that art. 8 is not necessary and could have not clear consequences. We support its deletion, or the regulation should have some generic provision replicating what is already provided in art. 128 TFEU. In any case, in order to reach a consensus on the legal tender provisions as soon as possible, we could be flexible. LT (MS comments): We remain open to engaging in discussions on the suggestions put forward by the Presidency, as the matter pertains to legal soundness and coherence. In this context, it may be appropriate to seek further clarification and guidance from the CLS.

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	LU (MS comments): LU: Article 8 DER is necessary and must be kept. Replicating Art 128 TFEU (particularly the wording proposed in the PRES discussion note) would not be fit for the purpose. It is also necessary to keep the distinction between the two forms of the digital euro and the reference to the place of establishment of the payee for online payments. NL (MS comments): **NL comment:** We believe it makes sense to keep the wording in article 8 because the digital nature of this payment method requires a specification of where and in which scenarios the mandatory acceptance applies. It makes sense to determine this based on the location of the payee. PT (MS comments): We do not oppose any of the suggested options. The clarifications currently provided in Article 8, now under the title "scope of legal tender status", appear to stem directly from the legal tender status and the specificities of the online/offline modalities. Therefore, any clarifications still needed, regarding any of these modalities, could be made obvious in the Recitals. RO (MS comments): We believe art. 8 is necessary and we agree with the proposed elimination of " ***with the exception of payments performed at a distance***".

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	SI (MS comments): Yes, we agree that Article 8 is necessary.
Q12. Do Member States wish to amend Article 8 as suggested during the Council Working Party of 31 January 2025, with the adjustment of deleting the reference to "at a distance" in paragraph 1?	AT (MS comments): Yes, as mentioned above, Art. 8 (3) is an important clarification. The reference "at a distance" is not necessary since offline are always proximity payments. BE (MS comments): We agree. CZ (MS comments): *We agree that link to „at a distance" may lead to interpretation issues and therefore it can be deleted from the Article 8 (1).* DE (MS comments): • We can support the suggested deletion of the addition "with the exception of payments performed at a distance" in para. 1 as well as retaining the reference to the payee's location in para. 2. It seems indeed justified to require mandatory digital euro acceptance only where the payee is residing or established in the euro area. • However, we have reservations about the introduction of para. 3. As stated under Q 15, we would prefer a dedicated provision on

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	the details of what mandatory acceptance implies (offline/online, physical/virtual environment, and payment instruments / communication technology). EE (MS comments): EE: We support amending Article 8 as suggested during the Council Working Party of 31 January 2025, with the adjustment of deleting the reference to "at a distance" in paragraph 1. EL (MS comments): EL: We agree to delete the reference to "at a distance". ES (MS comments): Yes. It is physically impossible to make offline D€ payments at a distance, so the wording does not add any relevant information and could even be misleading. FI (MS comments): We agree FR (MS comments): To ensure consistency with legal tender, we need to prioritise the offline aspect of transactions. Too extensive a legal tender could force PSPs and merchants to provide too many technologies. We are therefore opposed to the proposed wording of Article 8. We again ask the ECB to present the technological choices and the development of the infrastructure to the Council, in order to inform the political decision.

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	HR (MS comments): We support amendment to the Article 8 as suggested in the PL PRES Discussion note with the adjustment of deleting the reference to "at a distance" in paragraph 1. IE (MS comments): IE supports the drafting proposal. At the January CWP, IE raised concerns regarding the drafting changes to recital 17, which noted: (17) "…The digital euro should have **the status of** legal tender ~~status~~ for offline digital euro payment transactions occurring within in the euro area, similarly to euro banknotes and coins, which have legal tender status in the euro area. The digital euro should also have legal tender status for online digital euro payment transactions made to a payee residing or established in the euro area, where the payer is also residing or established in the euro area, **in both situations of proximity and remote** payments. Similarly, the digital euro should have **the status of** legal tender ~~status~~ for online digital euro payment transactions made to a payee residing or established in the euro area, where the payer is not residing or established in the euro area…" This suggested that online and offline digital euro payments do not have legal tender status equally, which should not be the case. IE suggested the above drafting change (see bold underline and strikethrough). IE would like confirmation as to whether this drafting suggestion has been adopted. IT (MS comments): No, we don't. LT

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	(MS comments): We agree with the adjustment of deleting the reference to "at a distance" in paragraph 1 as this is an intrinsic characteristic of offline payments, whereas including the "distance" criterion in the provision may lead to interpretation issues. LU (MS comments): LU: yes, we agree with these amendments. NL (MS comments): **NL comment:** Yes. PT (MS comments): We agree with the proposed amendments clarifying that offline payments do not have to be accepted by payees in relation to payments performed at a distance. In our view, accepting offline payments in such cases is not possible and that should be clear in the wording. RO (MS comments): We agree with the deletion. SI (MS comments): Yes, we are in favour of the amendment. Article 8 should stay the same as proposed by Commission. SK (MS comments): We support the amendment.

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2) Non-POI payments	
Q13. Would Member States agree to excluding from the mandatory acceptance obligation businesses that only accept payments that are not initiated at point of interaction?	AT (MS comments): We agree that the exception in Art 9 (a) should be extended to all enterprises (pursuant to Art 3 (8) LTCR), irrespective of size and turnover. Where a payee only operates within the SEPA environment, i.e. accepting payments not via PoS terminals), but only via direct debits/credit transfers, we do not see any dependency from services owned or controlled by third-countries. In addition, providing the necessary infrastructure for receiving dEUR payments, where the payee does not accept a payment initiated at the point of interaction so far, does not seem meaningful, regardless of size/turnover aspects. Therefore, proportionality aspects are not relevant for this exception. Following the oral update on Art 9(a) DER, we support a term closely linked to the text presented in the PCY note for clarity purposes, with a clear reference to credit transfers and direct debits not initiated at the point of interaction in comparison with a rather broad term such as “payments not initiated at the point of interaction”. BE (MS comments): We prefer to keep the Commission's original wording. CZ (MS comments): *This will be subject to further analysis.*

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	DE (MS comments): • We support excluding businesses that only accept SEPA credit transfers and SEPA direct debits not initiated at the POI from the mandatory acceptance obligation. In this respect, the drafting proposal by our ESP colleagues in their non-paper seems to build a good starting point. • We believe that imposing an obligation to accept digital euro in these cases would not only be disproportionate for microenterprises and NGOs but for any payee. We do not see convincing reasons why it should be distinguished here between microenterprises and, for example, SMEs or other enterprises. • In our understanding, this is rather a general question of how to approach SEPA credit transfers vis-à-vis a digital euro which must be solved irrespective of the enterprises' size. The financial burdens to acquire the required infrastructure would, potentially, grow proportionally with the size of the enterprise. • There is no practical necessity to oblige such entities to accept the digital euro. Neither is European sovereignty at stake nor is there a reason to force such payees under the umbrella of a digital euro compensation model. • There is the risk that one digital euro is not equal to the value of the monetary debt ('face value') if all merchants would be forced under the digital euro compensation model. • Regarding alleged legal concerns: We do not share these concerns. The legality of such exceptions cannot be negated in general. It depends on the exact design of such exception and its reasoning. • First, P2P scenarios are being excluded from the legal tender regime irrespective of their size. We wonder why there should be legal constraints in excluding other scenarios irrespective of their

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	size, such as SEPA credit transfers in Article 9a (which might also apply to natural persons by the way). • Second, any payee might 'circumvent' an obligation to accept digital euro, simply by ceasing to accepting any digital means of payment. Given that the payment landscape is undergoing fundamental shifts towards a digitalisation of payments, we do not consider this to be a realistic scenario. Neither is it a convincing legal argument. **Drafting Proposal** Article 9 (a) DER *By way of derogation from Article 7(3) and Article 8, a payee shall be entitled to refuse digital euro in any of the following cases:* *(a) where the payee is an enterprise which ~~employs fewer than 10 persons or whose annual turnover or annual balance sheet total does not exceed EUR 2 million, or is a non-profit legal entity as defined in in Article 2, point (18), of Regulation (EU) 2021/695 of the European Parliament and of the Council, unless it~~ only accepts credit transfers **<u>and/or</u>** direct debits **~~and/or cash~~** **not initiated at the point of interaction** in the course of its business interactions;* EE (MS comments): EE: Scrutiny reserve. ES (MS comments): Yes. We support excluding from mandatory acceptance obligations those enterprises **or self-employed** persons (we could also use the definition of merchants of note 4) that only accept SEPA Credit Transfers and Direct

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	Debits **not in the point of interaction.** We support this exclusion for various reasons: ○ We consider it would not be proportionate to oblige merchants only accepting traditional Credit transfers and direct debits to build a POI to accept payments in digital euros. It is an excessive burden to acquire a point of interaction gateway. ○ Substituting traditional SEPA CrTr and DDs does not contribute to the objective of strategic autonomy and can lead to duplication of EU means of payment. ○ It would complicate the application of the compensation model we presented in our non-paper. Using the fees of SEPA as cap for the MSC would lead to very low caps, that will not enable PSPs to be compensated for the distribution of the D€. FI (MS comments): We agree FR (MS comments): France supports this proposal and would like to point out that SEPA is a pan-European, standardised and sovereign payment infrastructure. Good cooperation with the private sector has made it a success today. HR (MS comments): We agree to exclude from the mandatory acceptance obligation businesses that only accept payments that are not initiated at point of interaction. IT

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	(MS comments): We are still assessing the potential relevance of this provision especially related to the Italian market, where all retailer and service providers are already obliged to accept card payments. In any case, we have a slight preference for the original text of the Commission proposal, since the proposed wording will erode too much the mandatory acceptance of the digital euro, without any proportionality. LU (MS comments): LU: Merchants will be more likely to adopt and accept a new payment method that is well designed, comes with an appropriate compensation model and that brings the prospect of higher revenues or more efficient payments. While the principle of mandatory acceptance arising from the legal tender status of the digital euro will constitute an important element towards widespread adoption of the digital euro, it is important to allow flexibility in how businesses achieve this acceptance. In the spirit of compromise, we can agree to introduce an exemption for businesses that only accept payments that are not initiated at point of interaction. NL (MS comments): **NL comment:**. In essence, we believe the digital euro should be an attractive payment proposition both for businesses and consumers. If this is the case and the compensation model is fair to merchants, then determining which exceptions to mandatory acceptance are or are not proportionate will not matter.

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	We have a slight preference to keeping the wording as is on article 9 as this includes non-profit legal entities. We could, however, imagine excluding businesses accepting SEPA-transactions from mandatory acceptance, if accepting the digital euro would indeed impose an undue burden on them. The current drafting however is very broad and we are unsure of the impact of such drafting. We propose exempting non-profit organizations from the mandatory acceptance requirement. PT (MS comments): For the moment, our comments on this regard are preliminary. We have concerns about the first option: (i) it does not attend to the principle of proportionality, by disregarding the size of businesses, without a clear reasoning; and (ii) it is difficult to understand how excluding larger businesses contributes to the digital euro's project, which should serve an increasingly digitalized economy. In case this approach is considered adequate by a majority of Member States, we consider that it should include only smaller businesses. RO (MS comments): We agree with the drafting suggestion, which excludes from mandatory acceptance all merchants that only accept non-POI digital payments, irrespective of their size. We believe this, as it relieves some of the monitoring effort NCAs would otherwise need to put forth to assess all merchants applying for such exemptions, not to mention the costs that would be incurred by these merchants to implement DE acceptance solutions. In case this solution proves detrimental to the widespread acceptance of the DE, this exemption could be narrowed down in the future. SI (MS comments):

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	We consider the proposal, which excludes from the mandatory acceptance all merchants that only accept credit transfers, direct debits and/or cash, to be overly general. In our view, this approach would also (unintentionally) exclude merchants who accept payments via apps such as WERO or, in the case of Slovenia, the national solution FLIK that are essentially instant payments and as such a subgroup of credit transfers. If such payment methods become increasingly common across the euro area, this could lead to a situation where a significant number of merchants would no longer be required to accept digital euro payments. Given that the PL PLE acknowledged during the CWP meeting that the new proposal contains an error, we would like to propose a narrower formulation that would more adequately address the outcome of the discussion at the CWP meeting in January. **We are open to a compromise that excludes non-point-of-interaction (non-POI) merchants, provided that the definition is more clearly specified. Specifically, we would support a definition under which merchants that only accept (universal) payment orders via online or mobile bank apps, direct debits or cash would be excluded from the mandatory acceptance requirement. We would agree with such a formulation.** SK (MS comments): We prefer maintaining the Commission proposal. The PRES wording would need further clarifications. As an example, allowing enterprises which accept only credit transfers to refuse digital euro payments could be too broad and non-future proof. It could leave the space for acceptance of instant means of payments, such as QR code payments, while simultaneously setting ground for non-acceptance of digital euro.

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OR	
Would Member States agree to maintaining the Commission proposal on exceptions to mandatory acceptance, and consider an amendment to Article 17, whereby digital euro non-POI payments subject to mandatory acceptance cannot be charged more than incoming SEPA instant credit transfers?	AT (MS comments): As for the proposal to cap digital euro non-POI payments to SEPA instant credit transfers costs, we substantially doubt that such services can be offered at a reasonable price. With regard to the ongoing fee model discussions, we would be reluctant to open an additional debate on fee caps. BG (MS comments): We find this approach more convenient, provided the idea for wide spread use of the DE. DE (MS comments): • We oppose to address the issue of non-POI initiated digital (SEPA) payments by broadening the scope of the compensation model in Article 17. Agreeing on a fair and equitable compensation model is hard enough as it is. It is therefore crucial to avoid adding further complexity by capping part of the fees at the exceptionally low level of SEPA transfers. This would mean opening Pandora's box. EE (MS comments): EE: We prefer maintaining the Commission proposal and consider an amendment to Article 17. EL

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	(MS comments): EL: We agree to maintaining the Commission proposal on exceptions to mandatory acceptance and considering amendments to Art 17. We do not agree to further restricting mandatory acceptance, because in our view it undermines the legal tender status of the digital euro. In Greece, small merchants and self-employed are already obliged to accept digital means of payments such as credit cards. ES (MS comments): No. IE (MS comments): IE does not agree with excluding businesses that only accept SEPA credit transfers, SEPA direct debits and/or cash, irrespective of their size. The Commission's proposal should be retained. IE agrees that digital euro non-POI payments should not be charged more than incoming SEPA instant credit transfers. This will need to be considered further in the context of the compensation model but IE does not see a proportionality issue with respect to businesses. As stated in response to Q9, IE notes, further exemptions could hurt digital euro adoption levels and possibly usability of digital euro and therefore should be avoided. By creating an exemption IE considers it could be exploited and a trend could be created where more businesses move to only non-POI acceptance to avoid digital euro but further removing payment choice from businesses and citizens in future. LT (MS comments): We agree to maintaining the Commission proposal on exceptions to mandatory acceptance, and consider an amendment to Article 17, whereby

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	digital euro non-POI payments subject to mandatory acceptance cannot be charged more than incoming SEPA instant credit transfers. LU (MS comments): LU: no, the monitoring of such obligation would be too cumbersome. PT (MS comments): Regarding the second option, and in line with our previous comments, we prefer to maintain the COM's proposal on exceptions to mandatory acceptance and we are also open to further assessing an amendment to Article 17. In any case, we consider that, at this stage, this should not be an obstacle to move forward with the digital euro file and, therefore, are flexible to accommodate a divergent view from the majority of Member States. SK (MS comments): We have a preference for Commission proposal.
3) Point of interaction	
Q14. Do Member States agree with the proposed amendments to Articles 2 and 22 DER and recital 59?	AT (MS comments): We agree with the proposed definition of POI in Article 2. In our view, the new Art 22 (6) does not bring any substantive changes and is therefore not necessary. BE (MS comments):

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	Yes, we agree. CZ (MS comments): *We agree that it will be useful to define „POI“. However, the wording will be subject to further analysis.* DE (MS comments): Article 22 para 6: • First of all, we agree that payees subject to an acceptance obligation should be required to accept digital euro payments only through the point(s) of interaction through which they accept private payments. We thus welcome the direction of travel of the proposal. However, we would rather see such a provision as part of a dedicated, stand-alone provision on the implications of mandatory acceptance. • We also believe, that the provision could be made clearer by only specifying that merchants who are required to accept digital euro payments are not obligated to establish a new POI for receiving such payment. • Any overlaps with Article 9 (a) in terms of its scope should be avoided. **Drafting Proposal** Article 22 DER *6. Payees, whether operating in a physical, virtual, or both environments, shall accept digital euro payments at their respective points of interaction in the same manner as they accept other digital means of payment.*

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	<u>Article 2 – Definitions:</u> • We believe the proposed definition of 'point of interaction' requires revision. • It could otherwise lead to circular reasoning. The reference should not be made to the location where the payment transaction is initiated, but rather to the location where either the exchange of goods or services was initiated, or where the contractual relationship for that exchange was formed. **Drafting Proposal:** Article 2 DER *xx) 'point of interaction' means the initial point in the payees' physical or virtual environment where the payer initiates and authorises a digital euro payment transaction but excluding credit transfers and direct debits that are not initiated directly in the payees' physical or virtual environment.* <u>Recital 59</u> • We generally agree with the objectives outlined in the recital and can also support the proposed insertion. • However, in light of the importance of leveraging existing open standards and creating new standards that can benefit the European payments market, we propose to explicitly mandate the ECB to make the relevant standards and processes available in the form of open standards. • We therefore propose to delete the words "seek to" and "on a best-effort basis" in the last sentence of the recital. In our view, the

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	qualification "where deemed appropriate" ensures that the ECB is not obligated to anything unreasonable or beyond its capabilities. Drafting Proposal: Recital 59 *59) To facilitate a harmonised user experience, the digital euro rules, standards and processes that the European Central Bank may adopt pursuant to its own competences, should ensure that any digital euro user is able to carry out digital euro payment transactions with any other digital euro users across the euro area regardless of the payment service providers involved and the front-end services used. To reduce the fragmentation of the European retail payments market, and to support competition, efficiency and innovation in that market, and the development of payment instruments across the Union in keeping with the objective of the Commission's retail payment strategy, the digital euro should be, to the extent possible, compatible with private digital payment solutions, building on functional and technical synergies. In particular, the European Central Bank should seek to ensure that the digital euro is compatible with private digital payment solutions at the point of interaction, which includes Point-of-Sale, e-commerce, m-commerce, as well as payees' environments that may cater for developments of future retail payments, and in person-to-person payments, where the fragmentation of the Union retail payments market is currently significant. The use of open standards, common rules and processes, and possibly shared infrastructures could support such compatibility. While existing solutions may be leveraged where such solutions are deemed appropriate to ensure that compatibility, notably in view of minimising overall adaptation costs, such existing solutions should not create undue dependencies that could prevent adaptation of the digital euro to new technologies or would be incompatible with the digital euro features. In order to achieve these objectives, and without conferring any enforceable rights upon market operators, the European Central Bank*

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	***should** ensure that the digital euro is compatible with private digital payment solutions and where deemed appropriate.* • Finally, we would like to point out that the digital euro rulebook or the ECB Governing Council will play a decisive role in facilitating the setting of standards for key elements of the payment process and the common acceptance network for a digital euro. According to the current wording of Article 5, the ECB is the sole governing body for the rulebook and as such responsible to define standards and measures for the entire front-to-back network. • We wonder, whether it might be more appropriate to establish a governing body for the digital euro rulebook in a public / private partnership instead. This would speed up processes, render complicated consultation processes obsolete and ensure that the Scheme continues to develop new innovative elements. EE (MS comments): EE: We agree with the direction of amendments. EL (MS comments): EL: We could agree with the proposed wording for a definition of the 'point of interaction' in Article 2 of the DER and also with the proposed addition to recital 59 of the DER. However, as a general comment, we should not deviate from other definitions of 'point of interaction' to ensure a coherent approach. ES (MS comments): In general, we agree with the proposed amendments to all articles.

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	- We believe that the clarification of article 22.6 is crucial to avoid excessive burdens for merchants and/or PSPs – depending on the sharing of costs - (if a merchant is just offering e-commerce in comparable means of payment it should be obliged to offer D€ for e-commerce but not beyond; also a merchant only offering POS comparable means of payment should only be obliged to offer POS D€ payments). - We agree with the clarification in recital 59 DER of what POI includes, namely POS, e-commerce and m-commerce. - **On the definition of POI in article 2, we have some doubts**. The definition seems to imply that the transaction is initiated in the payee's physical or virtual environment. This might not always be the case in certain POS or e-commerce transactions, for instance in QR payments, the scanning of the code takes place in the payer PSP's app, or instant A2A payments solutions in e-commerce which are also payer initiated. An option that could be explored is to eliminate the reference to "payee's" and maybe including a reference to merchants, leaving the wording as follows: *"point of interaction" means the ~~payee's~~ physical or virtual environment where a payment transaction* ***to a merchant*** *is initiated.* - We would not oppose to join the content of art. 2 and art. 22.6. in one single article. We do however wonder if such a long article would be suitable for a definition, merely from a legislative point of view. - We would support to complement recital 59, when it talks about interoperability – in sentence: "*the digital euro should be, to the extent possible, compatible with private digital payment solutions, building on functional and technical synergies*" – to add a reference to the use of open standards by the ECB, make a reference of the project as a public-private partnership and talk about a joint scheme governance, as other MS suggested.

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	FI (MS comments): Yes FR (MS comments): We generally agree that payees subject to the acceptance obligation should be required to accept digital euro payments only through the point(s) of interaction through which they accept payments. HR (MS comments): Yes, we agree with the proposed amendments by the PL PRES to Articles 2 and 22 DER and recital 59. IE (MS comments): IE supports the proposed amendments to Articles 2 and 22 of the DER, and recital 59. IE is not aware of any other regulation or directive that uses the definition of POI and is unclear if there would be any implications for other regulations. IE would like clarification as to whether the CLS considered the definition and the possible implications for other legislative instruments. IE suggests one final amendment to art. 22(6). Included in bold underline below. This is a small change and just to avoid confusion that this is an either/or situation. 22 (6) "…Payees that only operate in a physical environment and **payees that only** accept digital payments at a physical point of interaction shall accept digital euro payments in the same manner. Payees that only operate in a virtual environment and accept digital payments at a point of interaction in that environment shall accept the digital euro in the same manner. Payees that operate in both environments shall

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	accept digital euro payments in both manners, depending on the relevant environment…" IT (MS comments): We generally agree that payees subject to the acceptance obligation should be required to accept digital euro payments only through the point(s) of interaction through which they accept private payments. So, we agree with the underlying reasons of the PCY proposal. LT (MS comments): We agree LU (MS comments): LU: yes, we can support these amendments. NL (MS comments): **NL comment:** Yes, we agree. PT (MS comments): We agree with the proposed amendments. RO (MS comments): We agree with the proposed amendments. SK (MS comments):

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	We bring to the consideration introduction of the definition of the merchant. Definition could be taken from non-euro area DER.
4) Form factors: Coordination in the legislative text between the distribution and the acquiring sides to ensure that payers can always pay with digital euro to all payees	LU (MS comments): LU: in our view the text should remain as technological neutral as possible, furthermore such level of granularity should be avoided in the L1 text. We are in favour of keeping the outcome-oriented approach set by the principle of mandatory acceptance without being too prescriptive in the text about the methods used to achieve this acceptance. We should not be prescriptive on the methods on how to achieve this acceptance
Q15. Do Member States agree to clarify the obligations of merchants and PSPs as regards the payment instruments and associated communication technologies for each use-case? If so, do Member States support the proposed drafting?	AT (MS comments): It makes sense to specify which form factors are covered by the acceptance obligation as with the current formulations this was unclear. BE (MS comments): We are open to accepting the proposed new recital; however, we cannot support the proposed paragraphs in Article 22. In our view, the need to reach a compromise on payment instruments and associated communication technologies should be addressed within the drafting of the Rulebook. CZ (MS comments): *We are flexible regarding this issue.*

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	DE (MS comments): General remark: • We welcome PCY's proposal of specific text regarding the implications of mandatory acceptance, i.e. concerning the form of the digital euro (online or offline) a merchant must accept, based on which form factor / communication technology, and in which environment (physical or virtual). • However, we believe the placement of these proposals within the draft (e.g. in Article 22 DER) is not entirely convincing. In our view, the question of what mandatory acceptance entails should be addressed in a new dedicated article in Chapter III. This article might be inserted directly after the provisions on the scope of the mandatory acceptance obligation, specifically following Article 11 of the proposal. • With regard to the specific design of this article, we still see the question of what level of effort can reasonably be imposed on merchants who are obligated to accept digital euro payments. Therefore, it would be valuable to gain a better understanding of the efforts and costs associated with the different technical solutions. • Specifically, we are interested in knowing whether the same infrastructure can be used for both online and offline applications, as well as for the different payment instruments and the underlying communication technology, or if merchants would be required to make multiple infrastructure investments, leading to higher costs. • When weighing the technical efforts and costs associated with the two modalities of the digital euro and the different payment instruments and communication technologies, we should make

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	sure to prioritize the acceptance of the offline digital euro, given its significance for privacy protection and resilience. • The issue of mandatory payment instruments and associated communication technologies is complex. Therefore, we must express a reservation for further scrutiny. For now, we offer only preliminary thoughts. • That being said, we agree that the burden put on merchants and payment service providers through mandatory acceptance must be reasonable, proportionate, and limited to what is strictly necessary to ensure general usability of the digital euro. We therefore consider the proposal for coordination between distribution and acceptance side to be reasonable. • In this context, we consider it crucial to guarantee meaningful participation of merchants, PSPs and digital euro users as the relevant stakeholders. We recognize that the proposal for the new recital 54bis provides for a consultation process to support consensus-building. However, the ultimate decision-making authority, including future updates in line with technological advancements, is assigned exclusively to (the governing body of) the ECB. • We believe that for the sake of an efficient functioning of the digital euro payment scheme, a closer partnership between the public and the private sector would be most beneficial. As stated before, we would therefore support the establishment of a governing body for the digital euro rulebook in a public / private partnership. • With respect to the proposed wording for the new paras. 7,8, and 9 of Article 22, we generally support the underlying reasoning, but are not convinced that Article 22 is the appropriate placement. ○ Based on our preliminary assessment, para. 8 should be moved to an Article dedicated to the details of what mandatory acceptance implies.

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	○ Para. 7 would fit more logically within Article 13, ○ while para. 9 could be relocated to Article 2 as a definition of the term 'mandatory payments instruments and communication technologies'. • Finally, we want to raise some practical questions: ○ Will the mandatory payment instrument be supported by more than just one communication technology or will the merchants be required to have infrastructure in place for more than just one relevant communication technology? ○ According to the table contained in the PCY Note, in essence there would be only two payment instruments: cards and the payment app. If any app could process any communication technology (i.e. NFC, QR, Bluetooth) wouldn't that 'solve' the issue of acceptance? PSPs would have to issue cards, as they do today, and, in addition, a digital euro payment app, most likely incorporated into their own apps. Now the question would be, if it is foreseen (1.) that the banking payment apps should handle all types of communication technologies and (2.) what additional costs and complexity would this imply for the PSPs? ○ How relevant does the ECB deem the support of QR codes? How widespread is the use of QR codes today? • Overall, we reserve further comments on this issue, subject to the technical developments. **Drafting Proposal**: We propose to refer to 'core payment instruments' rather than 'mandatory payment instruments' in Article 22 (7) to (9). EE (MS comments): EE: We agree with the need to clarify the obligations of merchants and PSPs as regards the payment instruments and associated communication

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	technologies for each use case. However, the legal text should remain principle-based and technologically neutral while providing sufficient legal clarity and flexibility (to avoid overburdening stakeholders with excessive implementation requirements and costs). Details should be defined in standards and rules adopted in close collaboration with relevant stakeholders. EL (MS comments): EL: As a general comment, we could agree with a minimum set of required payment instruments and associated communication technologies defined by the ECB, bearing in mind that having broad acceptance of too many possibilities (or marginal instruments) could be extremely costly. We would also support the drafting. ES (MS comments): Yes, we agree with the idea and have some specific comments on the drafting suggestions: - **The new recital 54bis** explains the need to coordinate in the determination of mandatory payment instruments and communication technologies. It emphasizes that even if the determination is done by the ECB in the rulebook, it will first consult with different stakeholders, including merchants, PSPs and consumer representatives. It determines the principles that will guide the selection of the instruments and technologies: (i) usability for payers, (ii) burden on payees and (iii) technological change**. We would add a fourth principle, namely (iv) security protection against fraud or other threats (e.g. cyberattacks)**. We believe that a new public means of payment should ensure the highest level of security. - **We agree with adding three new paragraphs in article 22**, to reflect the need to adopt the mandatory payment instruments and

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	communication technologies when offering D€ services. We however consider that art. 22(7) could e improved. The wording seems to imply that PSPs have an obligation to provide D€ services, which does not match with distribution obligations in Article 14. Maybe it could be clearer to say “Payment service providers **offering digital euro services** shall make available for **their** ~~all~~ digital euro users mandatory payment instruments…” FR (MS comments): The governance of the standard is key to ensuring that it is properly adapted by the various market players. A bottom-up approach is essential to ensure that standards are adapted and accepted by the market. HR (MS comments): Yes, we agree to clarify the obligations of merchants and PSPs as regards the payment instruments and associated communication technologies for each use-case and we support the proposed drafting suggestions by the PL PRES. We find that legal text should remain technologically neutral and that set of required payment instruments and communication technologies should be defined in the detailed measures, rules and standards pursuant to Article 5(2) (the Rulebook for digital euro). IE (MS comments): IE welcomes the PL Presidency’s work to date on clarifying the obligations of merchants and PSPs regarding payment instruments and associated communication technologies. PSPs need to provide suitable payment instruments to individuals and acquiring PSPs need to enable digital euro payment acceptance for their merchants and that they need to provide the technology to allow for the payment instruments.

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	We consider that defining payment instruments and communications technology is something for the Digital Euro Rulebook and not the legislation. Defining both could lead to a fixed list and close the digital euro off to future innovation. Linked to this point, the Digital Euro Rulebook is easier to update when compared to the legislation so can track better and quicker with payment developments. IE also notes the Digital Euro Rulebook will undergo a stringent market consultation process to ensure market buy-in and alignment. IT (MS comments): While we generally agree with the underlying reasons for the proposals made by the Presidency, we ask for some more time to better ponder and further comment on them. We take this occasion to note and endorse efforts made by this Presidency to highlight the position of the merchant, not only by proposing the insertion of a new definition but also clarifying its obligations when the digital euro comes onto the stage. Using the wording of the proposed definition for merchants, it is more and more clear that, differently from the use of cash, digital euro payments to merchants imply that the merchants/payees must contract in advance “acquiring services with a view to receiving digital euro payments”. This obligation to acquire acquiring services exist before the digital euro payment transaction and is independent from such transactions. So far this obligation has been mixed to and improperly confused with the legal tender mandatory acceptance of the digital euro while we firmly believe that the mandatory acceptance connected to legal tender of money (in general) is legally distinct from the previous obligation that some merchants may have to contract acquiring services with PSPs. We wish that this initial discussion on the merchant’s obligation to buy acquiring services can evolve and eventually lead to the drafting of a new specific provision clarifying this point (as it was also proposed during the CWP). We believe this could have at least the following benefits: 1) better quality of the text in

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	terms of legal clarity; 2) better alignment with the regulation on Legal Tender of euro-cash; 3) speeding-up of the negotiation. LT (MS comments): We are in favour of maintaining a technology-neutral and principles-based approach in the digital euro regulation. To support this objective, we recommend that any specific requirements related to form factors and similar technical elements be addressed within the digital euro Rulebook. LU (MS comments): LU: no, rules on instruments and technologies and underlying communication technology are of technical nature and should be defined in the rule book rather than in the regulation itself. NL (MS comments): **NL comment:** We will limit ourselves to some general comments for this question. While we understand the proposal to mandate the types of communication technology which acquiring and distributing PSPs should make available, we wonder whether the grounds for mandating this are sufficiently legitimate. We wonder whether the fears for a mismatch were expressed by PSPs in the Rulebook Development, as we can imagine these types of requirements are part of the operational requirements to be determined in Rulebook Development. If there is a consensus that these communications technologies are to be determined, we would welcome drafting suggestions which shows a co-decision on these matters between the ECB and sector parties. We could

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	imagine a joint board of ECB and sector parties drawing conclusions jointly. Finally, we think the set of communication technologies to be mandated for development should be limited to one per payment instrument. PT (MS comments): Overall, and for the moment, the approach proposed by the PL Presidency seems adequate. From a more technical perspective, we have doubts about the proposed new Article 22(7), as we consider that adjustments should be made in Annex II, instead. We will further assess the proposed wording and send more detailed comments in writing. RO (MS comments): We agree with the proposed drafting. SI (MS comments): We support the proposed drafting. SK (MS comments): We agree with the need to clarify. We could support clarification in the rulebook.
end	AT (MS comments): ***end*** BE

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	(MS comments): ***end*** BG (MS comments): ***end*** CZ (MS comments): ***end*** DE (MS comments): ***end*** EE (MS comments): ***end*** EL (MS comments): ***end*** ES (MS comments): ***end*** FI (MS comments): ***end*** FR (MS comments): ***end***

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	HR (MS comments): ***end*** IE (MS comments): ***end*** IT (MS comments): ***end*** LT (MS comments): ***end*** LU (MS comments): ***end*** NL (MS comments): ***end*** PT (MS comments): ***End*** RO (MS comments): ***end*** SI (MS comments):

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	end SK (MS comments): ***end***

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