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WORKING DOCUMENT

From:	Presidency
To:	Working Party on Financial Services and the Banking Union (Digital Euro Package) Financial Services Attachés
N° prev. doc.:	WK 14241/25
Subject:	Legal Tender of Cash Regulation: WP on 25 November – Presidency compromise text

Delegations will find attached drafting suggestions prepared by the Danish Presidency on the file in subject. Changes are marked as compared to the Commission proposal in bold and underline (**additions**) and strikethrough (~~deletions~~).

In addition, changes as compared to the last version (WK 14241/25) are marked in grey. These can be found in: recitals (4a), (4aa), (5a), (5b), (6), (8) and (8a) and articles 1, 2(4), 3(5), 3(6), 3(7a), 3(10), 3(12), 5(1) and 8a.

2023/0208 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the legal tender of euro banknotes and coins

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal form the European Commission,

Having regard to the opinion of the European Central Bank,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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

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

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

(3) Commission Recommendation **2010/191/EU if 22 March 2010** on the scope and effects of legal tender of euro banknotes and coins[2] provides for a common definition of legal tender of euro banknotes and coins.

(4) In a judgment of 26 January 2021[3], the Court of Justice of the European Union clarified that the concept of 'legal tender' mentioned in Article 128(1) TFEU is a concept of Union law that must be given an autonomous and uniform interpretation throughout the EU[4]. Secondly, the Court held that the concept of 'legal tender' of a means of payment denominated in a currency unit signifies that "that means of payment cannot generally be refused in settlement of a debt denominated in the same currency unit, at its full face value, and without surcharges for the payer, with the effect of discharging the debt"[5]. ~~Thirdly, the Court stated that an obligation to accept euro banknotes and coins may, in principle, be restricted by the Member States whose currency is the euro for reasons of public interest and pursuant to their competences outside of the area of monetary law and policy and of other exclusive Union competences, provided those restrictions are justified by a public interest objective and proportionate to it[6].~~

(4a) As acknowledged in the relevant case law[7], the mandatory acceptance of euro banknotes and coins may be restricted by the Member States whose currency is the euro for reasons of public interest and pursuant to their own competences outside of the area of monetary law and policy and of other exclusive Union competences, provided those restrictions are justified by a public interest objective and proportionate to it. Such exercise of Member State competences pursuant to a public interest includes the organisation of the public administration by regulating, under public or private law, the procedures for settling pecuniary obligations towards the public administration (e.g. payment of taxes or payment of services performed in the

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

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

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

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

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

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

public interest, such as public transport). Such restrictions apply in addition to the exceptions to the obligation of mandatory acceptance of cash provided in this Regulation. Subject to the same conditions, the Member States also maintain the possibility to adopt, pursuant to their own competences, for instance in the field of consumer protection, stricter measures on the obligation of the mandatory acceptance of cash, in particular with a view to ensuring financial inclusion.

(4aa) The obligation to accept banknotes and coins denominated in euro for payment purposes applies where a payment obligation exists in accordance with the applicable law or established legal practice. This Regulation therefore does not purport to regulate how parties conclude contracts or for which reasons a party may validly refuse entering into a contract.

(4b) The payer and payee may agree on a means of payment different from cash. The voluntary nature, and the existence of an agreement on the use of a different means of payment should be determined in accordance with the applicable national law of contracts. Member States should regularly monitor that the use of this exception, in its overall effect, does not lead to widespread and structural refusals of cash that are undermining the general obligation of mandatory acceptance of cash across their territory. Where necessary, the Member States should take appropriate measures to ensure that the mandatory acceptance of euro banknotes and coins in their territory is upheld.

(4c) For recurring payments or advances to receive from payees within the framework of a single contractual relationship, cash is not always used. In some Member States, companies such as gas, water, electricity, telecom providers and insurance companies generally contract at a distance and receive on a monthly, quarterly or yearly basis very large numbers of payments from clients and citizens. In such cases, it should be possible for the parties to a contract to provide that these payments should not be made with cash, through written contractual terms to which the payer has freely and validly agreed. This Regulation is without prejudice to such contractual practices, as long as the essence of legal tender is preserved for those persons that are only able to or want to pay in cash. In addition, Member States should maintain the possibility, pursuant to their own competences in the field of consumer protection and the regulation of those services and utilities, in particular with a view to ensuring financial

inclusion, to adopt stricter measures that oblige retailers and service providers to accept or facilitate the acceptance of cash also for those payments.

(4d) The European Court of Justice has recognized that Member States may, in the exercise of their own competence, adopt restrictions on the use of cash where the public interest pursued consists of ensuring that monetary debts to public authorities are honoured in a way that does not involve those authorities in unreasonable expense which would prevent them from providing services cost-effectively[8].

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

(5a) The provisions of this Regulation should be without prejudice to Regulation (EU) 2024/1624 of the European Parliament and of the Council, of 31 May 2024, on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and to Directive (EU) 2024/1640 of the European Parliament and of the Council, of 31 May 2024, on the mechanisms to be put in place by Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Directive (EU) 2019/1937, and amending and repealing Directive (EU) 2015/849.

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[8] **See judgment of 26 January 2021 in Joined Cases C-422/19 and C-423/19, *Hessischer Rundfunk*, EU:C:2021:63, point 73**

(5b) Mandatory acceptance of euro cash is a fundamental obligation stemming from the concept of legal tender. Therefore, as regards business-to-consumer transactions, at the point of sale, retailers or service providers should not be able to unilaterally exclude cash as a payment method ex ante as regards transactions where the consumer is physically present, for example by displaying a 'no cash' sign. 'No cash' signs' could easily proliferate and lead to widespread refusals of cash which would undermine the mandatory acceptance and ultimately the status of legal tender. However, retailers or service providers should be able to indicate a preference to receive payments by card or electronic means, for example by clearly displaying a sign 'electronic means of payment preferred'. Should the payer agree to pay by electronic means, in line with such an expressed preference, it should be considered, in accordance with applicable national law, that an agreement on the use of a different means of payment was validly concluded. However, where, in spite of the expressed preference of the retailer or the service provider, the payer prefers to discharge a payment obligation by using euro cash, the retailer or the service provider should respect this choice. Competent authorities should monitor refusals to accept cash as means of payment. For instance, 'cards preferred' signs and exceptions foreseen in this Regulation, under the principle of good faith, should not be used by payees to, in practice, refuse cash payments in all circumstances. Member States should ensure that payers have the possibility to complain to the competent authority if they consider that the mandatory acceptance of cash was not respected.

(6) In order to ensure that the ~~principle~~ **general obligation** of mandatory acceptance of payments in euro banknotes and coins is not ~~effectively~~ undermined by widespread and structural refusals of cash payments **going beyond, or by the abuse of, the exceptions to the mandatory acceptance set out in this Regulation**, ~~it is necessary for Member States to monitor the level of ex ante unilateral exclusions of payments in cash when transactions are performed in physical premises. Therefore,~~ Member States should regularly monitor**,** **following complaints or of their own motion,** ~~the level of unilateral ex ante exclusions of~~ **the acceptance of** payments in cash when ~~payments~~ **transactions** are performed in physical premises throughout their territory, in all their different regions, including urban and non-urban areas**.**~~, on the basis of common indicators which allow for comparisons between the Member States.~~ **Such monitoring should be done on the basis of a framework of common indicators used for individual reporting by the Member States. These common indicators should allow for comparisons between Member States where appropriate, while they could be complemented by specific national indicators to capture different country-specific situations. Common indicators could include the percentages of retailers and service providers that do not accept cash at their physical premises in any circumstances, the percentage of citizens who perceive their ability to pay with cash to be difficult, the number of complaints received from citizens, and qualitative assessments of key sectors or areas, socio-economic variations and geographical differences. The collected data should allow the Commission and the ECB to have a clear euro area overview based on objective data. The primary responsibility for assessing whether the mandatory acceptance of payments in cash is ensured in the national territory lies with the Member States, subject to a possible dialogue with the Commission and the ECB.** If in light of their assessment acceptance of payments in cash is ensured on their territory, Member States would not need to adopt specific measures in relation to their respective obligation. However, they would need to continue monitoring the situation. If a Member State concludes that **widespread and structural refusals of cash are undermining the general obligation of** ~~ex ante unilateral exclusions of cash undermine the~~ mandatory acceptance of payments in euro banknotes and coins in all or part of its territory, that Member State should take effective and proportionate measures to remedy the situation~~, such as a prohibition or restrictions on ex ante unilateral exclusions of cash in all or parts of its territory, for example in rural areas, or in certain sectors which are deemed essential such as post offices, supermarkets, pharmacies or healthcare, or for certain types of payments which are deemed essential~~.

(7) With a view to **ensuring** an effective implementation of their obligation to ensure sufficient and effective access to cash, Member States should regularly monitor the level of access to cash throughout their territory, in all their different regions, including urban and non-urban areas~~, on the basis of common indicators which allow for comparisons between the Member States~~. **Such monitoring should be done on the basis of a framework of common indicators used for individual reporting by the Member States. These common indicators should allow for comparisons between Member States where appropriate, while they could be complemented by specific national indicators to capture different country-specific situations. The collected data should allow the Commission and the ECB to have a clear euro area overview based on objective data.** Common indicators could include factors that affect access to cash, such as **distance to and** density of cash access points **including ATMs and other customer operated machines** in relation to population, withdrawal and deposit conditions, including fees, the existence of different networks with different access modalities for customers, urban-rural and socio-economic variations, and access difficulties for certain population groups. **The primary responsibility for assessing whether sufficient and effective access to cash is ensured in the national territory lies with the Member States, subject to a possible dialogue with the Commission and the ECB. The aim of such dialogue is for the Commission, the ECB and the Member State to reach a common understanding of the access to cash and discuss whether there is a need for potentially further measures to be taken in order to ensure the access to cash.** If in the light of their assessment access to cash is deemed sufficient and effective on their territory, Member States would not need to adopt specific measures in relation to their respective obligation. However, they would need to continue monitoring the situation. If a Member State concludes that access to cash is not sufficient and effective in all or part of its territory, or is at risk of deteriorating in the absence of action, appropriate remedial measures should be taken to remedy the situation**.** ~~,~~ ~~s~~**S**uch ~~as~~ **measures could include soft law measures or policy actions as well as legislative actions and could concern** geographic access requirements on **the cash industry (such as** payment service providers**, credit institutions, independent ATM operators, but also retailers offering cash-back, post offices offering also financial services, etc.)** providing cash withdrawal services to maintain cash services at a sufficient number of their branch offices where they conduct business, or through an appointed agent ~~for online only credit institutions~~, or maintain a sufficient density of automated teller machines (ATMs) where they conduct business taking into account a good geographic spread in relation to population, also taking into account possible pooling of

ATMs**, or**~~.~~ ~~Other~~ **other** remedial measures~~ could include recommendations addressed to non-credit institutions, such as independent ATM operators, retailers or post offices, encouraging to complement the cash services of banks~~.

(8) The Commission should be empowered to adopt implementing acts on a set of common indicators of general application in the euro area, which would allow the Member States to effectively monitor and assess the acceptance of payments in cash and access to cash throughout their territory, in all their different regions, including urban and non-urban areas. **The Commission should adopt a broad set of common indicators to ensure both a degree of comparability of data and results in the euro area and take account of the heterogeneity of national situations. In their report, the Member States may use more specific indicators at national level with the aim of offering more detailed information allowing for an in-depth view of the specific circumstances of their national territories, regions and urban areas as regards acceptance of cash and access to cash. These national specific indicators should not, under any circumstances, substitute the common indicators.** In view of the preparation of such implementing acts, the Commission should consult the European Central Bank **and rely to the extent possible on existing reporting indicators, surveys and methodologies for data gathering and should take account of existing reporting frameworks, surveys and mechanisms for data gathering, in particular with regard to existing survey's and data collected by the Eurosystem. Under the broad set of common indicators to be adopted, redundancies and duplications of work should be avoided**.

(8a) Cash is a particularly resilient and effective means of payment in contingency situations, as it can be used to pay when there is no electricity or internet. It also requires no third party or technology to settle an in-person payment and it is instant. In this respect, it is essential to ensure that Member States are prepared appropriately to respond in different exceptional circumstances where the demand for cash could rapidly increase or cashless payments are significantly disrupted. This could be due to different exceptional situations that may affect both citizens and businesses. These could include military conflicts, geopolitical tensions, natural, environmental or technological disasters, hybrid or cyber-attacks, power outages or several such reasons at the same time. To achieve overall EU resilience in terms of stable circulation and money flow, it is important that all Member States prepare for such scenarios by adopting a cash resilience plan and that national central banks or other competent

authorities have pre-planned measures in place to respond in exceptional circumstances. Such plans should, as far as possible, be aligned with existing plans and strategies in place and be in accordance with applicable national law.

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

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

~~(11) In order to ensure that additional exceptions to the mandatory acceptance of euro cash may be introduced at a later stage if they are required, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to supplement this Regulation by introducing additional exceptions to the principle of mandatory acceptance for the euro area as a whole. The Commission may only adopt such additional exceptions if they are necessary, proportionate to their aim, and preserve the effectiveness of the legal tender status of euro cash. The power of the Commission to adopt delegated acts for the introduction of additional exceptions to the mandatory acceptance of accept euro cash should be without prejudice to the possibility for Member States, pursuant to their own powers in areas of shared competence, to adopt national legislation introducing exceptions to the mandatory acceptance deriving from the legal tender status in accordance with the conditions laid down by the Court of Justice of the European Union in the judgment in Joined Cases C-422/19 and C-423/19. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.~~

(12) In order to ensure uniform conditions for the **monitoring and assessment of** ~~provisions on~~ the acceptance of payments in cash and sufficient and effective access to cash, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[9]. The ~~advisory~~ **examination** procedure should be used for the adoption of the implementing acts on **a set of common indicators for monitoring** the acceptance of and access to cash ~~as they concern measures with a low impact, namely indicators for monitoring the acceptance of and access to cash, or acts addressed to individual Member States which in certain circumstances may need to adopt appropriate measures which would reflect the specificities of their national territories, regions and urban areas,~~ in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.

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

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

(14) The share of cash payments compared to electronic payments is higher for certain vulnerable groups including older age groups, persons with disabilities, and people with limited digital skills and lower income levels. This proposal is consistent with the European Accessibility Act[10], which covers automated teller machines (ATMs). Furthermore, financially excluded people, such as the unbanked, asylum seekers and migrants, who may not be able or willing to use means of payment supplied by the private sector, rely on cash as their payment method. Cash is considered to provide for a clear overview of expenses, with high degrees of ease of use, speed, safety and privacy. These vulnerable groups are more at risk of losing their access to a method of payment if their access to cash deteriorates. Thus, this Regulation would aim to preserve financial inclusion of vulnerable groups with a dependency on cash payments by ensuring that everyone in the euro area would be free to choose the preferred payment method and has access to basic cash services, while supporting Member States in continuing their policy efforts to promote digital financial inclusion, for example through measures aimed to increase financial and specifically digital finance literacy in education and training systems, as well as to address gaps in digital infrastructure, including in rural areas.

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

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

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

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

Article 2

Scope

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

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

3. [deleted]

4. This Regulation is without prejudice to restrictions to, or stricter rules on, the general obligation of mandatory acceptance of euro banknotes and coins that the Member States may adopt, pursuant to their own competence, for reasons of public interest, provided that these restrictions are justified by the public interest objective pursued and proportionate to it and provided that other means for the payment of monetary debts are available.

Article 3

Definitions

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

1. ‘cash’ means euro banknotes and coins;

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

3. ‘credit institution’ means a credit institution as defined in Article 4 (1) of Regulation (EU) No 575/2013[11] of the European Parliament and of the Council;

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

5. ’payer’ means any **natural or legal** person**, irrespective of its private or public nature,** who makes **or intends to make** a payment in euro cash;

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

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~~ **receives or is offered a payment** in euro cash;

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

7a. ‘high denomination banknotes’ means banknotes of 200 euros or more;

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

9. ‘retailer’ means an enterprise that sells goods to the public for use of consumption rather than for resale;

10. ‘public premises’ means, regardless of the ownership structure, a building, structure or area that is open and accessible to the public and used for the provision of goods and services;

11. ‘recurring payments’ means a series of payment transactions initiated by the payer or by the payee with the payer’s consent, made at fixed intervals, and used to pay for goods or services, including subscription services, utility bills, or other periodic payments;

12. ‘service providers’ means an enterprise that offers services to end consumers.

Article 4

Legal tender

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

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

3. In accordance with the acceptance at full face value of cash, the monetary value of euro banknotes and/or coins tendered in settlement of a debt shall be equal to the amount in euro indicated on the banknotes and/or coins. Surcharges on the ~~settlement~~ **payment** of debt with euro banknotes and coins shall be prohibited.

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

Article 4a

Prohibition of ex ante unilateral exclusion of payments in cash

1. **In order to ensure the mandatory acceptance of cash for the purpose of Article 4(2) and without prejudice to the exceptions provided in Article 5, ex ante unilateral exclusions of cash shall be prohibited in transactions where retailers or service providers offer goods and services in public premises and the consumer is physically present.**

2. **For the purpose of this article, ex ante unilateral exclusion of cash shall mean a practice or situation where a retailer or service provider unilaterally, and without the express agreement of the consumer, excludes cash as a payment method as a condition to sell. In particular, a sign informing customers that a retailer or service provider refuses to accept cash as a payment method shall constitute an ex ante unilateral exclusion of cash.**

Article 5

Exceptions to the ~~principle~~ general obligation of mandatory acceptance of euro banknotes and coins

1. By way of derogation from Article 4(2) **and without prejudice to Article 2(4)**, a payee shall be entitled to refuse euro banknotes and coins in any of the following cases:

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

(b) where, prior to the payment, the **payer and** payee ~~has~~ **have** agreed **in accordance with applicable national law** ~~with the payer~~ on a different means of payment.

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

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

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

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

~~*Article 6*~~

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

~~The Commission is empowered to adopt delegated acts in accordance with Article 10 to supplement this Regulation by identifying additional exceptions of a monetary law nature to the principle of mandatory acceptance. Those exceptions shall be justified by an objective of public interest and proportionate to that aim, shall not undermine the effectiveness of the legal tender status of euro cash, and shall only be permitted provided that other means for the payment of monetary debts are available. When preparing those delegated acts, the Commission shall consult the European Central Bank.~~

Article 7

Acceptance of payments in cash

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

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

3. If a Member State considers**, on the basis of its monitoring and assessment, that the acceptance of payments in cash is undermined by widespread and structural refusals of cash payments,** ~~that the level of acceptance of payments in cash in their territory or parts thereof undermines mandatory acceptance of euro banknotes and coins,~~ it shall set out the remedial measures it commits to take in accordance with Article 9(4).

Article 8

Access to cash

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

2. Member States shall notify the results of their monitoring and assessment of the situation as regards access to cash in accordance with Article 9(~~3~~**4**).

3. If a Member State considers that sufficient and effective access to cash is not ensured, it shall set out the remedial measures it commits to take in accordance with Article 9(4) **and Article 9(5)**.

Article 8a

Resilience of cash

Member States shall ensure a cash resilience plan is established by their national central bank in order to ensure access to cash in situations where there is widespread and severe disruption of the continuity of electronic means of payments or a credible and imminent risk of such disruption that affects or threatens to affect, in whole or in part, a Member State or the euro area. The resilience plan shall include different scenarios and measures addressing the risk of each scenario. If the national central bank is not the authority or one of the authorities responsible to prepare the plan, it shall be consulted on any measures requiring its involvement.

Article 9

Procedural aspects

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

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

3. ~~3.~~ **For the purposes of Articles 7 and 8, a Member State may use in its report specific national indicators, in addition to common indicators, to provide more detailed information on the specificities of its territory, regions, and urban areas. These specific national indicators shall complement the common indicators allowing for comparability of data and comparisons between Member States where appropriate. The specific national indicators shall not substitute or undermine the common indicators.** ~~The designated national competent authorities shall notify the results of their monitoring and assessment of the situation as regards the levels of acceptance of payments in cash and access to cash, giving grounds and data for their assessment, in an annual report to be addressed to the Commission and the European Central Bank as referred to in Article 13.~~

3a. The designated national competent authorities shall notify the results of their monitoring and assessment of the situation as regards the acceptance of payments in cash and access to cash, giving grounds and data for their assessment, in a report as referred to in Article 13.

4. If a Member State considers that the level of acceptance of payments in cash **is** ~~undermines~~ **undermined by widespread and structural refusals of cash payments,** ~~mandatory acceptance of euro banknotes and coins~~ or that **there is no** sufficient and effective access to cash ~~is not ensured~~, **in all or part of its territory,** it shall ~~indicate~~ in **the** ~~its annual~~ report**, set out** the remedial measures ~~it~~ **that the Member State** commits to take in order to comply with the obligations set out in Articles 7 and 8. The remedial measures shall enter into force without undue delay.

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

~~*Article 10*~~

~~**Exercise of the delegation**~~

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

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

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

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

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

~~6. A delegated act adopted pursuant to Article 6 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of one month of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the~~

~~Commission that they will not object. That period shall be extended by one month at the initiative of the European Parliament or of the Council.~~

Article 11

Committee procedure

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

2. ~~2.~~ Where reference is made to this paragraph, Article ~~4~~ **5** of Regulation (EU) No 182/2011 shall apply.

3. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act.

Article 12

Penalties

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

Article 13

~~Annual r~~Reports

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

   (a) the established exceptions to the ~~principle~~ **general obligation** of mandatory acceptance and their application;

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

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

2. The first ~~annual~~ report shall be submitted ~~one~~ **two** year**s** after the entry into force of **the implementing act adopted pursuant to Article 9(2) of** this Regulation. Subsequent ~~annual~~ reports shall be submitted ~~yearly after the date of the entry into force of this Regulation~~**every two years**.

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

4. For the purpose of carrying out the tasks under Articles 7, 8 and under Article 13 (1), national competent authorities

   (a) may, where appropriate, require the cash industry and payees to provide relevant data on their operations related to the acceptance of cash and access to cash;

(b) shall be entitled to collect and process necessary and relevant data, including necessary personal data, subject to compliance with applicable rules on the protection of personal data, in particular to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

5. Member States, their national competent authorities and other competent authorities performing cash-related tasks may - with the prior explicit consent of the authority which provided the data - use non-personal data for their own scientific research purposes and make the data available to scientific research bodies for their scientific research purposes.

Article 14

Duty of Member States to inform about remedies

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

Article 15

Interaction between euro banknotes and coins and the digital euro

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

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

Article 16

Review

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

Article 17

Entry into force

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

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

Done at Brussels,

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