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WORKING DOCUMENT

From: General Secretariat of the Council
To: Working Party on Financial Services and the Banking Union (Digital Euro Package)
Financial Services Attachés

Subject: Single Currency Package - Presidency questionnaire on LTCR (ddl 29 November 2024) - consolidated replies by 18 Member States

Single Currency Package - LTCR - WP meeting on 18 Nov. 2024 – Presidency Discussion Note on CWP on the legal tender of euro banknotes and coins

MS replies to PCY questions (WK 14258/2024 INIT)

Deadline: 29 November 2024

From: AT, BE, CZ, DE, EE, EL, ES, FI, HR, IE, IT, LT, MT, NL, PL, PT, SI, SK

Updated: 15/01/2025 19:08

Questions to Member States	Member States Comments
<p>Q1: Do Member States agree with the direction of travel (and the proposed wording) of the Hungarian Presidency regarding the explicit prohibition of ex ante unilateral exclusions of cash (Art. 4(2)) combined with the clarification in recital 5a on “electronic means of payment preferred signs”, and the agreement between the payer and the payee on this?</p>	<p>AT (Member States Comments): AT: We want to make three comments.</p> <p>Frist, while we deem cash payments as very important, we still think that an explicit ban of ex-ante unilateral exclusions of cash on EU-level is not the best way to go. Such a ban would impose a burden on the economy as it would oblige retailers and service providers to operate onerous cash handling systems in a disproportionate manner.</p> <p>Based on that argument, we prefer the initial Commission’s proposal since it tasks the Member States with the monitoring of unilateral exclusions of cash and requires Member States to act only if the level of ex-ante exclusion is inappropriate. This flexibility would benefit the economy as it would allow for differences in Member States to be respected and allow innovative business models to focus on alternative means of payment.</p> <p>In addition, the explicit ban of unilateral exclusions of cash could be in violation of the principle of freedom of contract. This principle enables a free choice of whether somebody wants to enter into a contract with a particular person. If a payer can insist on cash payments according to the compromise proposal, the payee will not have the freedom to choose whether he wants to enter into a contract with that particular person in the first place. Such drastic market intervention must be carefully</p>

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	<p>assessed and is usually only justified in a very limited number of scenarios including services where there is a monopoly of a certain service provider (e.g. electricity, water, etc). Thus, if the right to insist on cash payments is disproportionately extensive, this would be in conflict with the exception to the mandatory acceptance obligation based on freedom of contract. This means that there is a substantial risk that the freedom to conduct a business as enshrined in Article 16 of the Charter of Fundamental Rights of the European Union and national constitutional rights is not sufficiently respected. As has been pointed out by some Member States and the Council Legal Service in the Council Working Party, any compromise solution should respect the freedom of contract by not forcing a contract on the payee.</p> <p>As has been expressed by the Commission in the Council Working Party on 18 November 2024, if Member States would have to address any and every use of ex-ante unilateral exclusion of cash, this would be overly excessive.</p> <p>Secondly, the proposal seems to indicate in the definition of ex-ante unilateral exclusions of cash that the use of general contractual terms and conditions, in which electronic means of payment can be agreed upon, is not per se regarded as an ex-ante exclusion of cash. If our understanding is correct, we welcome the change.</p> <p>Thirdly, the new definition of ex-ante unilateral exclusions would definitely be an improvement as it would allow more breathing space for business transactions.</p>

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	<p>BE (Member States Comments): Belgium can accept in general the direction of travel. We find it important that Ex ante unilateral exclusions must be explicitly prohibited. We can accept in general the proposed recitals and amendments to Article 4(2). The preference for electronic means of payment displayed by the payee must never bind the payer. Payments made in cash may never be refused by the payer on the basis of this indication.</p> <p>CZ (Member States Comments): <i>CZ: Generally, we support the direction of travel, particularly as outlined in Recital 4b. From our perspective, ensuring contractual freedom is a key aspect that should be prioritised. Additionally, we do not oppose the prohibition of ex - ante unilateral exclusions of cash (e.g. „no cash“ signs). Regarding the draft of the new Recital. 5a, we find the inclusion of a „preferred signs“ option to be redundant. The added value of these signs should be carefully evaluated, especially if they are not self –explanatory for users.</i></p> <p>DE (Member States Comments): We would like to thank the Hungarian Presidency for their effort to explore potential common ground for compromise on this issue.</p>

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	<p>The Presidency’s proposal contains some elements – namely in Article 4 (2) and Article 5 (1) (b) – that point into the right direction. These changes seem to underline the general principle – as reflected in the 2010 Commission Recommendation – that parties can diverge from the principle of accepting cash by means of an agreement under the applicable national law. However, some other amendments – most prominently in the new Recital 5a – seem to counteract these improvements and thus further work on the alignment of the Recitals and the core text seems pertinent.</p> <p>Before commenting on the text in more detail, we would like to explain our general view on this issue. We continue to suspect that a concept which makes an absolute/hard mandatory acceptance the rule for all payees (including public authorities, private companies, individuals) in all circumstances and only carves out certain situations (in Article 5), is likely to miss out important use cases.</p> <p>We are concerned that an absolute mandatory acceptance for retail transactions would likely impose excessive burdens on the payees in relation to the objective sought be achieved. It might stipulate an obligation to accept cash that is impractical and will likely have adverse effects.</p> <p>In addition, it might lead to the introduction of a de facto prohibition of the usage of standard and consumer contracts concerning cash payments. This would significantly impact the</p>

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	<p>freedom of contract and the freedom of payees (not) to conduct business with a payer.</p> <p>We shall refrain from prohibiting certain specific contractual practices by merchants. Instead, the principle of proportionality must be respected.</p> <p>We have difficulties recognising how the prohibition of ex ante unilateral exclusions would be necessary. We wonder why a de facto prohibition of standard contracts in retail transactions should, for example, apply to all B2B payments, where the usage of cash is not sufficiently analysed by the available studies. We are wondering also about payments to public entities and how they would be affected. Years of work on how to digitalise public entities and how to make them more efficient and cost-conscious could be put into question.</p> <p>When assessing whether or not an obligation to accept cash and the proposal is proportionate, it must be considered that the Commission proposal foresees clear obligations vis-à-vis Member States to ensure availability of cash and access to it. Asking Member States to ensure access to cash and its availability – both constituting the corner stones of the Commission proposal – certainly is a means suitable to ensure that euro cash is being safeguarded. However, this must be duly taken into account when assessing (complementing) strict acceptance obligations and the overall proportionality of the Proposal. Thus, we are wondering to what extent a strict mandatory acceptance and, eventually, the possibility for payers to unilaterally impose cash as means of</p>

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	<p>payment on the payee (Recital 5a seems to point in this direction) is truly necessary.</p> <p>In this respect, we take note that recently several MS adopted national measures in order to strengthen cash. In most cases, such measures addressed the access to cash – not the acceptance of cash. Notably, also the COM President, Ms. Von der Leyen, in her mission letter to the incoming Commissioner Dombrovskis, asked the Commissioner to ensure ‘access to cash’. Mandatory acceptance of cash was not mentioned.</p> <p>Regarding the proposals by the HUN PCY, we would like to make to following comments:</p> <p>First, we acknowledge the changes made in Article 4 (2) and – very importantly – the crucial changes applied to the definition of ex ante unilateral exclusions in Article 3.</p> <p>However, we have difficulties understanding the exact legal implications of Articles 4 and 5 as well as the relationship between the new Recitals 4b, 4c and 5a. We appreciate the attempt by the Presidency to find potential space for a compromise. Recital 4b seems to pave a way for such compromise. Recital 4b seems to build on the logic of the initial COM proposal and the former Recital 6. We welcome thinking along these lines, leaving it to MS whether or not to regulate more strict obligations to accept cash.</p>

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	<p>In addition, please see our comments regarding the text proposal in the accompanying document.</p> <p>EE (Member States Comments): EE: Agree.</p> <p>EL (Member States Comments): EL: We need to preserve the uniform interpretation and implementation of LTCR across the EU. We have no objections to the use of the “electronic means of payment preferred” signs, under the conditions which are laid down in recital 5a.</p> <p>With regard to the topic of ex ante unilateral exclusions of cash, we believe that the present drafting is in the right direction. In particular, we agree with the placement of the explicit prohibition of the ex-ante unilateral exclusions of cash in Article 4(2). We appreciate the fact that a specific reference to the “no-cash” signs (as an example of ex ante unilateral exclusion) and their treatment under the Regulation is now included in the recitals. We are of the view that this will contribute to legal clarity and to the uniform interpretation and implementation of LTCR, which needs to be preserved.</p> <p>Nevertheless, we have concerns about the phrase “to be determined in accordance with applicable national law” in the definition of the ex-ante.</p> <p>ES</p>

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	<p>(Member States Comments):</p> <p>Yes, we agree with the direction of travel.</p> <p>An explicit prohibition of unilateral exclusions combined with a clarification in recital 5a that no cash signs are considered a unilateral exception provides clarity to the text.</p> <p>The text shows that mutual agreements and unilateral exceptions are to be interpreted according to national law, whereas no cash signs are in any case to be considered a unilateral exception.</p> <p>No card signs should be allowed as part of contractual freedom.</p> <p>FI</p> <p>(Member States Comments):</p> <p>We do agree with the direction of travel and the proposed wording. We would still propose further elaboration of practical implications stemming from this new approach. We also see that retaining the freedom of contract, at least to certain extent, is supportable from the practical perspective given the heterogeneity of payment habits among the Member States.</p> <p>HR</p> <p>(Member States Comments):</p> <p>Croatia agrees and supports the direction of new LTCR proposal. We agree with the text in Article 4(2) concerning the explicit prohibition of the ex ante unilateral exclusion of cash. However, there are some reservations regarding “electronic means of payment preferred signs” in recital 5(a). In B2C relationships, retailers and service</p>

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	<p>providers always possess greater bargaining power over consumers of goods and services. Moreover, the average consumer's knowledge and the legal standard of diligence argue against the understanding that they are actually giving their agreement or consent to the retailer's payment method proposal (in instances where a retailer/service provider displays a sign indicating 'electronic means of payment preferred'). Therefore, we propose that it is necessary to accompany the 'electronic means of payment preferred' sign with a disclaimer in smaller print stating that this does not prevent the payer from requesting to pay in cash. Nonetheless, this addition could potentially undermine the intended purpose of the sign.</p> <p>IE (Member States Comments): IE welcomes the text proposed by the Hungarian Presidency. IE prefers the wording of article 4(2) in the original proposal. IE welcomes the proposed inclusion of recital 5a.</p> <p>IT (Member States Comments): IT. In the previous discussion we shared the position of finding an appropriate balance between the principle of mandatory acceptance of cash and contractual freedom. This reflect the current architecture of COM Recommendation of 2010 where it is stated</p>

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	<p>that mandatory acceptance of cash shall be ensured where a payment obligation exists and unless the parties have agreed on a different means of payment.</p> <p>In this regard, we thank the PCY for their effort in finding a compromise. After a thorough assessment, we are not opposing in principle to a tailor-made solution, provided it leaves the room for some flexibility in certain use cases in which the need to protect the acceptance of cash is less urgent (for instance, B2B transactions). Therefore, we are open to consider the PCY proposal as a good starting point to find a compromise.</p> <p>However, we still have some concerns regarding the wording of some of the PCY proposals.</p> <p>Starting from recital 4b, we question the meaning and the implications of the reference to <i>“Member States should regularly monitor that the use of this exception, in its overall effect, does not lead to unjustified or disproportionate restrictions on the mandatory acceptance of cash across their territory”</i> related to contractual freedom. The implications of this sentence are unclear and can potentially interfere with the regulation of contract law, which is under the competence of each Member State. Indeed, it seems to imply that there could be a case in which, despite the payer and payee have freely agreed on a means of payment different from cash, there could be a restriction of contractual freedom if their agreement have a disproportionate effect. We cannot agree on this interpretation. If, according to national law, the contract has been validly concluded and the parties have freely agreed on a specific</p>

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	<p>means of payment, there cannot be any kind of external evaluation on the proportionality of the agreement.</p> <p>Furthermore, the reference to the monitoring obligation related to the mutual consent remains ambiguous. It is not clear what NCAs are expected to monitor (Every single agreement? How?). We should be as pragmatic as possible in establishing this monitoring obligation, looking at the information NCAs can access. Therefore, at this stage we continue to prefer the wording of recital 4b as agreed under the ES PCY.</p> <p>Regarding recital 5a, we are reading it together with the revised definition of “ex ante exclusion” in art. 3(4) – referring now to retail transactions. This is something that we are open to consider in the light of compromise, in order to ensure the best protection of end consumers, including vulnerable groups. However, we believe the regulation should make clear that: i) it is limited to retail transaction, namely the ones that involves a consumer. For the sake of legal clarity, we are open to discuss the introduction of a definition of "retail transaction", in order to clarify the scope of application of this provision while avoiding unintended consequences (e.g. micro-enterprises and natural persons acting in their trade, business or profession should still benefit from the protection offered by the mandatory acceptance); ii) it should refer to the cases where the parties have not previously agreed to settle the transaction with payment instruments different from cash (contractual freedom should always be possible).</p>

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	<p>Plus: i) we do not see the added value of the sentence “<i>competent authorities should monitor refusals to accept cash as means of payment</i>” since the monitoring obligations are already declined in recital 6; ii) we suggest dropping the reference to the right to complain and to further discuss the topic in the context of art. 14 of the Regulation.</p> <p>Please, see our drafting suggestion in the attached table.</p> <p>LT (Member States Comments):</p> <p>Overall, we are comfortable to mention “electronic means of payment preferred” signs, however uniform rules should apply across Member States, therefore we propose to modify Recital 5a accordingly (please see enclosed). Additionally, more straight forward language should be used regarding unilateral exclusions of cash, this is in line with Art. 4(2).</p> <p>MT (Member States Comments):</p> <p>Malta agrees with Presidency suggestions in this regard.</p> <p>NL (Member States Comments):</p> <p>We appreciate the work that had been done by the Presidency to find a middle ground. We do think the direction of travel is moving in the right way, but we still have some practical questions. In the case where there is a reasonable ground for not accepting</p>

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	<p>cash, the question is, how should one communicate about this to customers? We would therefore add that, there were there are exceptions on the mandatory acceptance of cash, one should have the possibility to communicate about this f.e. through no cash signs. We could consider the addition that ex ante unilateral exclusions are only prohibited when no exemption applies for example by adding ‘Without prejudice to the exceptions in Article 5, ex ante unilateral exclusions of cash shall be prohibited.’</p> <p>PT (Member States Comments):</p> <p>We strongly support the direction of travel in relation to mandatory acceptance, particularly the suggested articulation between this principle and contractual freedom. In this vein, we strongly support the approach conveyed in Recital 5a and in Article 4(2).</p> <p>Therefore, the following comments are primarily technical in nature:</p> <ul style="list-style-type: none"> • In relation to Recital 5a, we have a minor drafting suggestion of replacing “retailers or service providers” with “payees”, which is the term used and properly defined in this Regulation, particularly in Article 3(6). This suggestion would also ensure the use of uniform and consistent terminology throughout the Regulation. Please see our drafting suggestion in the column table with our written comments.

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	<ul style="list-style-type: none"> We strongly support introducing a clear prohibition of <i>ex ante</i> unilateral exclusions. Notwithstanding, we have some doubts regarding the definition proposed in Article 3(4), to more clearly defined what an <i>ex ante</i> unilateral exclusion of cash is. Only through such an approach can the dissemination of unwarranted refusals of cash payments be effectively prevented. We agree that the reference to the “applicable national law”, as well as to “consent”, may lead to ambiguity in the application of the rules foreseen in this Regulation regarding mandatory acceptance of cash payments. <p>For this reason, we propose a different drafting for this definition. In our opinion, the reference to Article 5(1)(b) would clarify that any agreement to exclude cash payments would need to be made prior to the payment and in accordance with the applicable national law. This drafting suggestion allows us to achieve the same objective while avoiding the expressions previously identified as concerning.</p> <p><u>Drafting suggestion:</u></p> <p>“4. ‘ex ante unilateral exclusions of cash’ means a situation when a payee unilaterally, and without the consent of the payer, to be determined in accordance with applicable national law, excludes cash as a payment method</p>

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	<p>in a retail transaction. <i>In these situations, it is considered that the payer and payee have not agreed to a different means of payment for a purchase, for the purposes of Article 5(1)(b);”</i></p> <p>SI (Member States Comments):</p> <p>In general, we support the newly proposed text of the draft Regulation on the legal tender of euro banknotes and coins (LTCR) presented by the Hungarian Presidency, in particular the explicit prohibition of ex ante unilateral exclusions of cash, which in our view is a crucial aspect to preserve the effectiveness of the legal tender status of cash in practice. In our view, it should always be the customer's choice which payment method he/she wants to use at the point of sale, in line with the general exceptions for cash as already applied by Commission Recommendation 2010/191/EU of 22 March 2010 on the scope and effects of legal tender of euro banknotes and coins. We consider it very advantageous that the main text of the proposed LTCR, namely Article 4(2), is short and explicit with regard to the prohibition of unilateral cash exclusions by businesses (payees). In this respect, we are also not opposed to the possibility for businesses (payees) to indicate their preferred means of payment (subject of the newly proposed recital 5a), as long as customers (payers) would ultimately have the possibility to decide on the means of payment (irrespective of the payee's expressed preference). What is somewhat worrying about the newly proposed text of the LTCR is that it creates grounds for introducing national practices regarding mandatory acceptance of cash by referring to the applicable national contract law and/or other</p>

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	<p>national legislation, which would likely lead to heterogeneous cash acceptance rules/practices across the Euro Area (EA) countries. This means that the concept of mandatory cash acceptance would not be implemented in the same way in all EA countries. Although we consider it important that these rules are applied in a harmonised manner across the EA, we are prepared to support this compromise text of the LTCR as it includes a strict prohibition of ex-ante unilateral exclusions of cash..</p> <p>SK (Member States Comments): Please consider our comments as preliminary. For us the proposed way forward looks promising. Of course we would have preferred to further harmonise the status of the legal tender and its acceptance because the euro cash held by our citizens should have the same or very similar legal tender status accross the eurozone, but being aware of the previous discussions, this could be a good starting point of a compromise. Besides the defintion of ex-ante unilateral exclusions we welcome their explicit prohibition in article 4(2).</p>
<p>Q2: On top of your detail comments on the Presidency draft (see separate table), please feel free to summarise here your main remarks/comments on the whole text proposal – where relevant</p>	<p>AT (Member States Comments): AT: Please see our comments to the proposed text contained in the other word document.</p> <p>BE (Member States Comments):</p>

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	<p>We have a number of concerns that still remain unaddressed in the proposal so far. First, we believe an exception to accept cash should be foreseen for instances where the payer and the payee are not physically and simultaneously present, this to better reflect the current reality that vending machines, parking meters, unmanned petrol stations, other automated systems have moved to cashless payments and reverting this would be very costly and unrealistic. Second, we ask for a better framing of the exception for ‘no change available’ which has the risk to be misused. Third, we see no need to refer to high denomination notes but would stick to the principle of proportionality to avoid that shops would refuse high denomination notes even when proportionate to the purchase or that payers would use 50 euro banknote for very small amounts. Lastly, we ask for a clarification in the scope of article 4 where it remains unclear to us if certain relationships (Eg employer/employee) would fall outside the scope of the prohibition of unilateral exclusions.</p> <p>DE (Member States Comments):</p> <p>With a view to the text proposal as a whole, we have to put our comments under a scrutiny reservation.</p> <p>We consider that, overall, the text has progressed. Leaving aside the issue of mandatory acceptance, compared to the initial Commission Proposal, many amendments were introduced under the ESP, BEL and HUN PCY that we can fully support. Overall, legal clarity was enhanced and we consider that an adequate balance between the roles of the Member States and the Commission is in sight. Many</p>

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	<p>relevant discussions were held and the text now reflects this. Overall, we believe that much progress has been made.</p> <p>In our assessment, only some issues will require substantial further discussions and drafting:</p> <p>First, the issue of mandatory acceptance of cash as described before. We see that the discussion, thanks to the HUN PCY, is moving into the right direction. However, still some progress needs to be made and we are willing to assist and provide our views on this particular issue – also under the incoming POL PCY.</p> <p>Already today, we would like to share some thoughts on how to overcome the current impasse: In essence, the general question is how to find a balance between the concept of legal tender on the one hand and contractual freedom on the other.</p> <p>In this respect, once again, we would like to point to the Commission Recommendations of 2010. The 2010 Recommendation clearly respects the duality of legal tender and freedom of contract, as does <i>Hessischer Rundfunk</i>. The question of acceptance of cash is described by the COM recommendation as follows: “<i>The creditor of a payment obligation cannot refuse euro banknotes and coins [general principle 1] unless the parties have agreed on other means of payment [general principle 2].</i>” With a view to the practical consequences for businesses and public institutions, we continue to advocate for reflecting this basic logic in the legislative proposal. You have to accept cash, but you also have the freedom to agree on another means of payment. Any exceptions limiting these two key</p>

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	<p>principles, should be carefully evaluated and tailor-made solutions are needed to clearly identify where indeed cash shall be protected (i.e. being necessary).</p> <p>To reach this goal and considering the very heterogenous situation in MS regarding cash, we consider that more flexibility at the EU level will prove more practically feasible for Member States to align their national legislation, if need be. Today, the acceptance situation of cash in Germany is satisfactory, which makes it hard to explain why a Euro area wide regulation on cash acceptance is indeed necessary. Rather Member States should be enabled to target any deficits they experience through measures at national level.</p> <p>Not introducing any prohibitions at EU level, would allow all those MS who favour a stricter approach to implement or keep such rules at national level. In any event, all Member States would indiscriminately ensure availability and access to cash thus safeguarding the concept of legal tender. This would be in line with the principle of proportionality. In our view, the initial Proposal by the Commission, in general, sought to reflect this balance adequately.</p> <p>Therefore, we would like to recall the initial COM proposal and, in particular, Recital 6 of the COM proposal. We would like to stress, again, that the COM proposal did not introduce a prohibition of ex ante unilateral exclusions but left ample freedom for MS to adopt measures, while obliging all MS to monitor the situation very carefully. We continue to support this approach.</p>

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	<p>Second, we believe that we need to discuss in more detail the monitoring of the acceptance of cash and the access to cash. Conducting a more thorough discussion concerning the scope and content of the common indicators remains vital to achieve progress on the file.</p> <p>Under the current draft, MS would be obliged to adopt potentially far-reaching measures in order to ensure access to cash and acceptance of cash. However, the question remains – in practice – when would MS have to adopt such measures? Currently, the legal text refers to two criteria. MS would need to act, if</p> <ul style="list-style-type: none"> ○ the acceptance of payments in cash <i>is effectively undermined by widespread refusals of cash payments,</i> and if ○ <i>there is no sufficient and effective access to cash.</i> <p>In practice, what is an insufficient and ineffective access to cash in Germany? When would the acceptance of cash in Germany be effectively undermined? To us, it remains unclear when this threshold would be reached. We understand the importance and relevance of the common indicators which would be accompanied by national indicators. However, the exact content of such indicators remains somewhat in the dark.</p> <p>This question seems pertinent to us, as the situation regarding access to cash and acceptance of cash is extremely heterogenous amongst MS. Would an insufficient and ineffective access to cash be the same in a MS with a vast territory but small population in comparison with a small but highly populated MS? If today, in a MS</p>

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	<p>cash is used in roughly 20% of all transactions whereas in another MS still 60% of all transactions are settled using cash – would there be an identical threshold for both MS in terms of an undermined acceptance of cash or access to cash? Access to cash will also be hard to measure due to the heterogenous banking market and branch structures in different MS as well as the varying availability of alternatives to cash services by banks, such as retailers offering cash-back. The latter should also be taken into consideration when referring to “cash access points”. Otherwise, a meaningful comparison between Member states or regions may be difficult.</p> <p>This uncertainty raises concerns not only from a practical and political perspective, but also from a legal perspective. We are wondering whether the empowerment of the Commission in Article 10 is sufficiently clear with regard to possible delegated acts to be adopted. We have difficulties recognising where it is defined in the Proposal what actually shall be meant by the term ‘common indicators’.</p> <p>In this respect, it would be most helpful if the Commission could provide a more thorough analysis on what they consider could be a first set of indicators on how they would be applied amongst MS.</p> <p>Third, we wish to reiterate an issue that was subject to discussions before: the obligation to provide reports annually. It shall be ensured that no unnecessary and overly burdensome bureaucratic processes will be imposed, neither on the Member States, nor on the cash industry. The necessity to have annual reporting obligations must be balanced very carefully against the proven benefits of such annual reporting. Even more so, if no changes in the situation of</p>

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	<p>access to cash and acceptance of cash are to be expected. We are concerned that the annual reporting will require significant administrative resources and staff. We would be very interested in hearing other MS views on the issue of reporting and the frequency of such reporting.</p> <p>Last but not least, with regard to Article 15, we believe that the rules on the legal tender of cash and the complementing rules on the legal tender of the digital euro should accommodate each other. Therefore, we believe a mutual alignment of both set of rules is pertinent. Also, the Single Currency Package should be kept together as a package and be adopted together.</p> <p>EE (Member States Comments): EE: We believe the Presidency drafting suggestions (Legal tender of cash Regulation – HU PRES 3CT) is a good basis for a compromise.</p> <p>EL (Member States Comments): EL: As a general remark, we welcome the efforts of the Hungarian Presidency to work towards a compromise on the outstanding issues of LTCR. We believe that a balanced approach has been achieved on the most difficult topics of the Regulation and we are of the view that significant progress has been made towards a compromise. Furthermore, we appreciate that all the topics on which an agreement has already been</p>

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	<p>reached during the discussions under the ES and BE Presidencies have been upheld in the present draft (e.g. deletion of Articles 6&10 of the Commission proposal regarding the additional exceptions of a monetary law nature, deletion of the possibility of the Commission to adopt implementing acts providing for adequate and proportionate measures to be adopted by the MSs in Article 9(5) of the Commission proposal, inclusion in the text of the Regulation of the MS’s powers to introduce national restrictions to the mandatory acceptance pursuant to their own competences, use of national indicators which will complement the common indicators for the monitoring).</p> <p>Our detailed comments on the text proposal can be found in the separate table.</p> <p>ES (Member States Comments):</p> <p>In general terms we agree with the changes proposed, very much in line with the ES PCY drafting suggestions except for the aforementioned matter, to which we also agree.</p> <p>We consider that the scope should be clear and limited to cash transactions, eliminating from the scope online purchases.</p> <p>We support limited exceptions to mandatory acceptance. Regarding the exclusions introduced by MS in the exercise of their own competences, we consider that cost efficiency principle is not enough to justify an exception to mandatory acceptance for public interest reasons, especially when we are dealing with the supply of basic</p>

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	<p>utilities like water of electricity. On a more formal basis, we would prefer to mention the exclusions introduced by MS in the exercises of their own competences due to public interest as an exception in article 5 and not as an exclusion from the scope in article 2.</p> <p>FI (Member States Comments):</p> <p>As stated above, we support the direction of the travel and the proposed wording in the context of ex ante unilateral exclusion of cash in payments.</p> <p>We also support the inclusion and recognition of national indicators.</p> <p>We also support the proposed changes regarding the delegation of power to the Commission.</p> <p>In addition, we would like to highlight the role of cash in enhancing resiliency in the payment markets. Accordingly, we suggest that the use of cash in a scenario where private payment systems and payment instruments are not working is mentioned in the recitals, since this would emphasize the important role of cash and the strengthen preparedness across Europe. For society as a whole, it is of considerable importance that households have preparations in place for any disruptions in payment systems, but such preparedness will be especially important for household members themselves. Geopolitical uncertainties are unfortunately increasing the likelihood of cyber risks and other external influencing in the financial sector as well.</p> <p>HR</p>

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	<p>(Member States Comments):</p> <p>Croatia views the monitoring of fees for cash services as a crucial task for the acceptance of cash and access to it. An increase in fees for cash services can discourage merchants from accepting cash, as well as decrease the number of ATMs and bank branches offering cash services. This is because higher fees for consumers will reduce demand, and consequently, the number of cash access points will diminish. We believe that monitoring these fees—for both consumers and business entities—can be an effective tool for implementing appropriate measures when disruptions are observed. Further, the definition of ‘ex ante unilateral exclusions of cash’ depends on the national law applicable, which permits the unequal treatment of cash among eurozone member states. A unified definition of ‘ex ante unilateral exclusions of cash’ and standardized rules on penalties would ensure the equal treatment of cash within the eurozone.</p> <p>IE (Member States Comments):</p> <p>IE welcomes the inclusion of the phrase “...the acceptance of cash is undermined by widespread refusals of cash payments...”. It allows for monitoring and review without but is not overly burdensome on the competent authority.</p> <p>IT (Member States Comments):</p>

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	<p>IT. Our main comments/drafting suggestions are:</p> <ul style="list-style-type: none"> ▪ We oppose to recital 4c – recurring payments. First, it is not clear the reason why this recital has been kept, considering that there is not any correspondent exception in article 5. Furthermore, these specific exceptions are not of a monetary nature, thus going beyond the legal basis of art. 133 TFEU. Plus, it could imply different interpretation, thus jeopardizing the application of the regulation (for instance, when “numbers of periodical payments or advances to receive from payees” could be seen as “large”?). Therefore, we would ask for its deletion. ▪ On art. 2(3) we question the added value of this provision. It’s already up to the Treaty to establish the euro as legal tendered money. So, we would avoid duplication, or at least we would suggest to cross-referencing to the Treaty if needed. ▪ Regarding the definitions: i) we support the new definition of <i>ex ante exclusion</i>, and we are considering if a definition of “retail transaction” is needed for the purposes of the regulation; ii) regarding the definition of “enterprise” it shall be replaced by “payee” that is already defined. There is no reason to keep different and more restrictive notion as “enterprise”. Therefore, we suggest also to replace “enterprise” with “payee” in art. 5(2). ii), as agreed with ES PCY. ▪ We are strongly opposing to the exception set out in art. 5(1)(c) - related to payee as natural person acting in the course of a purely personal or

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	<p>household activity. This provision could significantly hamper the legal tender status of cash.</p> <ul style="list-style-type: none"> ▪ On the monitoring obligations, we support the direction of travel of having a combination of national and common indicators. On art. 13, we just wanted to flag that having annual report would be extremely burdensome for NCAs, without any clear benefit. We suggest asking MSs to submit monitoring report on a biennial basis. ▪ On art. 15, we discussed under the BE PYC to delete this provision from the LCT regulation and discuss it in the context of the digital euro regulation. Considering the current state of paly of the Digital Euro regulation (for which a longer discussion would be needed) we would not oppose dropping this provision from the LTC regulation and discussing it in the context of the Digital Euro Regulation. <p>LT (Member States Comments): We support Presidency’s choice to maintain Art. 15 and provisions regarding high denomination banknotes, to abandon the enlarged list of exceptions. In our view, the agreement between the payer and payee on means of payment different from cash should not be regulated by national laws of Member States, as this may lead to different practices across Member States regarding “No Cash” signs. 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</p>

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	<p>and uniform interpretation throughout the EU. Please also see enclosed detailed comments on the proposed draft of LTC Regulation.</p> <p>MT (Member States Comments): Malta does not have any further remarks.</p> <p>NL (Member States Comments): We see the progress that is made with this proposal. We are happy to see that the primary responsibility for assessing whether the acceptance of and access to cash is ensured, lies firmly with the Member States. Our position has always been that the obligation to accept cash should have a smaller scope, limited to cash payments at the point-of-sale. However, given the different situations in the Member States and the fact that some Member States already have a national obligation to accept cash, it seems difficult to define an obligation to accept cash on a European level that also accommodates for these differences. We appreciate therefore the attempt to focus on retailers and service providers. We do think that we have to do a final check whether everything is covered in the current text. E.g. vending machines should not be part of the scope in our opinion, how are vending machines exempted in the current proposal? There can be other examples of cases where it is not preferred to be part of the scope, because of the specific nature of the work. It is important that it is clear in the text that the principle of mandatory acceptance is already an established principle. Therefore we suggest to add an reference to the <i>Hessischer Rundfunk</i> case (such as: available, as explained in the judgment of 26 January 2021¹), and add the text regarding the principle, for example to add ‘established’: to the established principle of mandatory acceptance.</p>

¹ See judgment of 26 January 2021 in Joined Cases C-422/19 and C-423/19, *Hessischer Rundfunk*, EU:C:2021:63

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	<p>We are surprised by the new article 9.5. We discussed this before and had the feeling that there was a large understanding that the existing process described in Article 258 of the Treaty on the Functioning of the European Union is sufficient to remedy violations of Union law by Member States.</p> <p>PL (Member States Comments): <i>The draft should clearly indicate that the proposed regulation will apply only in Member States whose currency is the euro.</i></p> <p>PT (Member States Comments): As said in our previous answer, we do agree with the overall direction of travel regarding the proposal.</p> <p>Despite that, we would like to highlight our strong concerns about the new Recital 4c.</p> <p>The first sentence appears to suggest that cash is rarely used for recurring payments or advances. This may not adequately reflect the different realities across Member States.</p> <p>The second sentence refers to certain sectors that provide essential services, such as gas, water, electricity, and others. We believe that this is not an adequate approach and, therefore, this sentence should be deleted. Identifying certain sectors may have unwarranted effects, leading to the dissemination of cash refusals.</p>

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	<p>What is important in this context is to ensure that any restrictions comply with the conditions specified in Case Law Hessischer Rundfunk, which states that “such restrictions must be proportionate to the public interest objective pursued” (paragraph 68).</p> <p>Regarding Article 12 (penalties), we prefer to maintain the approach foreseen in the COM’s proposal, which we believe is more aligned with the objectives pursued by this Regulation.</p> <p>We also have doubts regarding the argument that, under the principle of sincere cooperation, Member States may be required to establish sanctions as a remedial measure to ensure acceptance of cash payments and access to cash.</p> <p>While we may agree with this conclusion from a strictly legal perspective, we have some concerns that, in practice, its implementation could prove challenging.</p> <p>Lastly, we believe Article 13(4) should be deleted, as it seems to be unnecessary to introduce this new provision. NCAs are already entitled to collect this information, under EU law, namely under: (i) the Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting; and (ii) the ECB Decision of 16 September 2010 on the authenticity and fitness checking and recirculation of euro banknotes (ECB/2010/14).</p>

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	<p>SI (Member States Comments):</p> <p>Other general comments on the Presidency's draft LTCR are as follows:</p> <ul style="list-style-type: none"> - - The LTCR still does not contain any provisions or references to fees that cash service providers may introduce for the provision of cash services. Currently, we can observe in practice that several different fees are charged for these services and that these fees are increasing over time. As often reported in current discussions at CWP meetings, we see cash-related fees as the third (equally important) axis in terms of preserving the effectiveness of the legal tender status of cash in practice. Indeed, private and mostly profit-oriented cash service providers could deliberately increase cash-related charges (which are currently not regulated), which would discourage citizens from using cash. This would have a very similar effect on the use of cash as the reduction of cash access points, and with LTCR we are now trying to regulate access to cash in order to preserve the cash infrastructure (i.e. we should also address the issue of fees). Our proposal in this respect is to regulate charges only for the basic cash services and not 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 charges - ceilings). Furthermore, given that the same issue of charges is thoroughly addressed

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	<p>and regulated in the proposed Regulation on the introduction of the digital euro, where cash and the digital euro should be considered as complementary (in both cases issued by the same entity - the central bank), we urge the Presidency to propose / introduce similar provisions on charges and accompanying recitals also in the LTCR. For this purpose, the text of Article 17 and the accompanying recitals of the proposed Regulation on the establishment of the digital euro could be effectively used. In this aspect we support full coherency of both proposed Regulations (LTCR and digital euro);</p> <ul style="list-style-type: none"> - When setting the exemptions to the principle of mandatory acceptance of euro banknotes and coins in Article 5(2i) of LTCR the proposed text refers to high denomination banknotes of €100, €200 and €500. While we agree with the proposed exception which is in fact applied already today through Commission Recommendation 2010/191/EU and which sets the ground for payees to refuse cash payments if the value of the banknote tendered is manifestly disproportionate compared to the value of the amount to be settled, we object that €100 banknotes would be considered high value banknotes. With current or recent price inflation (decreased purchasing power with the existing denominational split) and the fact that more and more ATMs in the EA (very relevant also in Slovenia) are distributing €100 banknotes, this denomination is more and more often used for transaction purposes and not only as a store of value. And we would prefer to avoid situations where businesses (payees) would be able to undermine the status

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	<p>of legal tender through this provision. In this light we propose to eliminate €100 denomination from the definition of high denomination banknotes in Article 3(7a) and to only refer to €200 and €500 as the high one. Alternatively (or even preferable), the LTCR could also omit stating the exact denominations being the high one – similar to the text in the Commission Recommendation 2010/191/EU;</p> <ul style="list-style-type: none"> - Reference to the judgment of Court of Justice of the European Union in Hessischer Rundfunk case throughout LTCR is probably plausible and reflects current practices and gives further guidance on possible restrictions / interpretations to the principle of mandatory acceptance of cash. Nevertheless, we object to including specific references to current practices in this field in the LTCR (either in the main text or in the recitals) as to give ideas to businesses (payees) and other public entities to refuse cash payments and to potentially undermine the legal tender status of cash in the long term. We oppose to including such references also due to the fact that these practices are indeed current and may not be relevant in the years to come. Specifically (as one example), we are referring to the newly proposed Recital 4c which we propose to be deleted altogether.
End	