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## **WORKING DOCUMENT**

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<b>From:</b>	Presidency
<b>To:</b>	Working Party on Financial Services and the Banking Union (Digital Euro Package) Financial Services Attachés
<b>Subject:</b>	Single currency package - LTCR & Digital euro WP meeting on 31 March- 1 April - Annex to Presidency Discussion Note on alignment of euro cash and digital euro legal tender provisions

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Polska Prezydencja w Radzie UE  
Polish presidency of the Council of the EU  
Présidence polonaise du Conseil de l'UE



**Digital Euro Regulation**  
**Legal Tender of Cash Regulation**  
*Brussels, 31 March*

**Annex to the Presidency discussion note**  
**Discussion on alignment of euro cash and digital euro legal tender provisions**

## Annex



Polska Prezydencja w Radzie UE  
Polish presidency of the Council of the EU  
Présidence polonaise du Conseil de l'UE

Category	Legal tender of cash Regulation (HU drafting suggestions <b>bold</b> )	Digital euro Regulation (ES drafting suggestions in <b>red</b> , PL Pcy January suggestions <b>bold black</b> )	Potential need for alignment in the Pcy's view
	<b>Article 2 Scope</b>		
<b>B</b>	<p>1. This Regulation applies to <b>the settlement of pecuniary debts in cash, in whole or in part and the access to and acceptance of cash, in order to ensure the effectiveness of the legal tender of cash.</b></p> <p>2. This Regulation shall not apply to payments for goods or services purchased at a distance, including online.</p> <p><b>3. Euro banknotes and coins shall have legal tender status for payments of a monetary debt within the euro area.</b></p> <p><b>4. This Regulation is without prejudice to restrictions to the principle 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.</b></p>		<p>No need for alignment, differences are warranted.</p> <p>FYI - The PL PRES changed only the wording of par. 3 to provide better coherence with the Treaty and the Regulation No. 974/98, as well as making this provision consistent with the terms used in Article 2(1).</p>
	<b>Article 3 Definitions</b>	<b>Article 2 Definitions</b>	
<b>A</b>	<p>3. 'credit institution' means a credit institution as defined in Article 4 (1) of Regulation (EU) No 575/2013<sup>16</sup> of the European Parliament and of the Council;</p>	<p>2. 'credit institution' means a credit institution as defined in Article 4(1), point (1), of Regulation (EU) No 575/2013 of the European Parliament and of the Council<sup>1</sup>;</p>	<p>Identical in both regulations.</p>

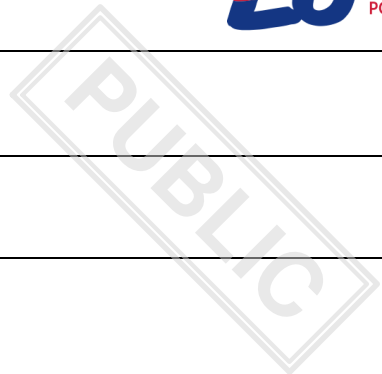


C	4. 'ex ante unilateral exclusions of cash' means a situation when a retailer or service provider unilaterally, <b>and without the consent of the payer, to be determined in accordance with applicable national law</b> , excludes cash as a payment method <b>in a retail transaction</b> .		The new approach proposed by the PL Presidency (bringing together in one article all provisions – including the definition – relating to the prohibition of ex ante unilateral exclusions of cash) aligns to a certain extent the two Regulations, as in both there is a standalone article prohibiting unilateral exclusions of the digital euro and cash respectively.
C	5. 'payer' means any <b>natural or legal person, irrespective of its private or public nature</b> , who makes a payment in euro cash;	9. 'payer' means anyone who has a digital euro payment account and allows a payment order from that digital euro payment account;	Possible need for alignment.
C	6. 'payee' means any <b>natural or legal person, irrespective of its private or public nature</b> , who is the intended recipient of funds which have been the subject of a payment transaction in euro cash;	10. 'payee' means anyone who is the intended recipient of funds which have been the subject of a digital euro payment transaction;	Possible need for alignment.
	<b>Article 9 Procedural aspects</b> <b>Article 12 Penalties</b>	<b>Article 6 Competent authorities</b>	
C	<b>Article 9 Procedural aspects</b> 1. With a view to implementing the obligations set out in Articles 7 and 8, Member States shall designate one or more national competent authorities with the required powers as regards acceptance of payments in cash and access to cash, and over the cash-related market activities of the cash industry. [...]	1. <b>The</b> Member States <b>whose currency is the euro</b> shall designate one or more competent authorities to ensure compliance with Chapter III and Article 17 in their territory. They shall inform the Commission thereof, indicating any division of functions and duties.	Possible need for alignment regarding the voluntary vs obligatory nature of the penalty regime.  Further differences that may warrant alignment:

C	<p><b>Article 12 Penalties</b>          Member States may lay down the rules on penalties 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. <b>If penalties are laid down</b>, Member States shall, within <b>two years</b> 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.</p>	<p><b>The Member States whose currency is the euro</b> shall lay down the rules on penalties applicable to infringements of Chapter III and Article 17 and shall take all measures necessary to ensure that these rules are implemented, including the power of competent authorities to access the necessary data. The penalties provided for shall be effective, proportionate and dissuasive. Member States <b>whose currency is the euro</b> shall, without delay, notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them.</p>	<ul style="list-style-type: none"> <li>• Member States ‘whose currency is the euro’ in the DER not present in LTCR.</li> <li>• “including the power of competent authorities to access the necessary data.” in the DER, not reflected in the LCTR.</li> </ul>
C	<p><b>Article 4          Legal tender</b></p>	<p><b>Article 7          Legal tender status</b></p>	<p>Title should be aligned</p>
A	<p>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.</p>	<p>1. The digital euro shall have legal tender status.</p> <p>2. The legal tender status of the digital euro shall entail its mandatory acceptance, at full face value, with the power to discharge from a payment obligation.</p>	<p>Identical in both regulations.</p>
A	<p>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. <b>Ex ante unilateral exclusions of cash shall be prohibited.</b></p>	<p>3. In accordance with the mandatory acceptance of the digital euro, the payee shall not refuse digital euro tendered in payment to comply with that obligation.</p>	<p>Identical in both regulations, save from the explicit mention of ex ante unilateral exclusion in LTCR (discussed in section 2.4 of the Pcy note and listed with the relevant DER provision on the prohibition of unilateral exclusion below).</p>

<p><b>B</b> <b>C</b></p>	<p>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 of debt with euro banknotes and coins shall be prohibited.</p>	<p>4. In accordance with the acceptance at full face value of the digital euro, the monetary value of digital euro tendered in payment of a debt shall be equal to the value of the monetary debt. Surcharges on the payment of debt with the digital euro shall be prohibited.</p>	<p>Two deviations:          1)          LTCR: shall be equal to the <b>amount in euro indicated on the banknotes and/or coins</b>          DEUR: shall be equal to the <b>value of the monetary debt.</b>          → No need for alignment in the Presidency's view          2)          LTCR: Surcharges on the <b>settlement</b> of debt          DEUR: Surcharges on the <b>payment</b> of debt          → Need for alignment (see section 2.2 of the Pcy note)</p>
<p><b>B</b></p>	<p>4. In accordance with the power to discharge from a payment obligation, a payer shall be able to discharge from a payment obligation by tendering euro banknotes and coins to the payee.</p>	<p>5. In accordance with the power of the digital euro to discharge from a payment obligation, a payer shall be able to discharge himself from a payment obligation by tendering digital euro to the payee.</p>	<p>No need for alignment, differences are warranted.</p>
		<p><b>Article 8 - Territorial scope of legal tender status (according to COM proposal)</b></p>	
<p><b>B</b></p>		<p>1. The digital euro shall have legal tender status for offline payments of a monetary debt denominated in euro that take place within the euro area.</p>	<p>No need for alignment, differences are warranted as in the Pcy's view there is no need for reference to territorial scope of legal tender of banknotes and coins.</p>
		<p>2. The digital euro shall have legal tender status for online payments of a monetary debt</p>	

		denominated in euro to a payee residing or established in the euro area.	
	<b>Article 5 Exceptions to the principle of mandatory acceptance of euro banknotes and coins</b>	<b>Article 9 Exceptions to the obligation to accept the digital euro</b>	
<b>A</b>	1. By way of derogation from Article 4(2), a payee shall be entitled to refuse euro banknotes and coins in any of the following cases:	By way of derogation from Article 7(3) and Article 8, a payee shall be entitled to refuse digital euro in any of the following cases:	Identical in both regulations.
<b>B</b>		(a) where the payee is an enterprise <b>or a self-employed person</b> which employs fewer than 10 persons or whose annual turnover or annual balance sheet total does not exceed EUR 2 million, or <b>is</b> a non-profit legal entity as defined in in Article 2, point (18), of Regulation (EU) 2021/695 <b>of the European Parliament and of the Council</b> , unless it accepts comparable digital means of payment <b>initiated at the point of interaction or credit card payments;</b>	No need for alignment, differences are warranted.
<b>A</b>	(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 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;	Identical in both regulations.
<b>C</b>	(b) where, prior to the payment, the payer and payee <b>have agreed in accordance with applicable national law</b> on a different means of payment.	(d) where, prior to the payment, the payee has agreed with the payer on a different means of payment, subject to Article 10.	See section 2.3 of the Pcy note.
<b>C</b>	<b>(c) where the payee is a natural person acting in the course of a purely personal or household activity;</b>	(c) where the payee is a natural person acting in the course of a purely personal or household activity;	See section 2.3 of the Pcy note.
	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. (moved below see 5(3))		
<b>B</b>	2. For the purposes of the application of paragraph 1(a), such legitimate grounds may include:		
<b>B</b>	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.		
<b>B</b>	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.		
<b>A</b>	<b>3. For the purposes of the application of paragraph 1(a), the burden of proof to establish that such legitimate grounds existed in a particular case and that the refusal was proportionate, shall be on the payee.</b>	For the purposes of point (b), the burden of proof to establish that legitimate and temporary grounds existed in a particular case and that the refusal was proportionate shall be on the payee.	Identical in both regulations.
	<b>Article 3(4) Definitions &amp; Article 4(2) Legal tender</b>	<b>Article 10 Prohibition of the unilateral exclusion of payments in the digital euro</b>	
<b>B</b>	<b>Article 3 Definitions</b> 4. 'ex ante unilateral exclusions of cash' means a situation when a retailer or service provider unilaterally, <b>and without the consent of the payer, to be determined in accordance with applicable national law</b> , excludes cash as a payment method <b>in a retail transaction</b> .	Payees subject to the obligation to accept the digital euro shall not use contractual terms that have not been individually negotiated or commercial practices which have the object or the effect to exclude the use of the digital euro by the payers of monetary debts denominated in euro. Such contractual terms or commercial	No need for exact alignment in wording, but possibly stronger alignment in terms of content (see section 2.4 of the Pcy note).

<p><b>B</b></p>	<p><b>Article 4 Legal tender</b>                  2. Ex ante unilateral exclusions of cash shall be prohibited.</p>	<p>practices shall not be binding on the payer. A contractual term shall be regarded as not individually negotiated where it has been drafted in advance and where the payer has therefore not been able to influence the substance of the term, particularly in the context of a pre-formulated standard contract.</p>	<p>The new approach proposed by the PL Presidency (bringing together in one article all provisions – including the definition – relating to the prohibition of ex ante unilateral exclusions of cash) aligns to a certain extent the two Regulations, as in both there is a standalone article prohibiting unilateral exclusions of the digital euro and cash respectively.</p>
<p><b>C</b></p>	<p><del><b>Article 6</b>                  Additional exceptions to the principle of mandatory acceptance of euro banknotes and coins of a monetary law nature</del></p>	<p><b>Article 11</b>                  Additional exceptions of a monetary law nature</p>	
	<p><del>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.</del></p>	<p>The Commission is empowered to adopt delegated acts in accordance with Article 38 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 the digital euro, 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.</p>	<p>See section 2.5 of the Pcy note.</p>

<b>A</b>	<b>Article 15 Interaction between euro banknotes and coins and the digital euro</b>	<b>Article 12 Interaction between the digital euro and euro banknotes and coins</b>	<b>Identical in both regulations.</b>
	1. Euro banknotes and coins and the digital euro shall be convertible into each other at par.	1. The digital euro shall be convertible with euro banknotes and coins 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	2. Payees of a monetary debt denominated in euro shall accept payments in digital euro according to the provisions of this Regulation, irrespective of whether they accept payments in euro banknotes and coins in accordance with Regulation (EU) [ <i>please insert reference – proposal on the legal tender status of euro banknotes and coins – COM (2023) 364 final</i> ]. Where the acceptance of euro banknotes and coins and of the digital euro is mandatory in accordance with the provisions of this Regulation and Regulation (XXX on the legal tender of euro banknotes and coins), the payer is entitled to choose the means of payment.	