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Final report of the Euro Legal Tender Expert Group (ELTEG)

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1. INTRODUCTION

The Euro Legal Tender Expert Group (hereafter ELTEG III) was re-established by the Commission on 14 January 2021, with a view to: establishing a forum for discussion between the Commission, the ECB and the Member States on questions relating to the acceptance and availability[1] issues of euro cash; providing the Commission with factual analysis and legal expertise on the acceptance of euro cash as payment means and the availability of euro cash in the euro area Member States; and assisting the Commission with the assessment of a possible EU legislative or policy initiative on the legal tender of euro banknotes and coins. The above-mentioned tasks should be delivered in the form of a report of ELTEG III to the Commission. It was also envisaged that ELTEG III could be consulted by the Commission, in the context of its cooperation group Commission-ECB on digital euro, for technical questions regarding the legal tender, if necessary, and depending on the stage of development of this project. ELTEG III met 5 times[2], and this report constitutes the deliverable of the group's terms of reference. Sections 2 and 3 of the report outline the findings of the group on acceptance and availability of cash in light of the results of a written survey of ELTEG III members and the factual summary reports of these findings, section 4 introduces the digital euro and its implications on the legal tender of cash and section 5 sets out the principles which ELTEG III proposes should orient the European Commission, the European Central Bank and the Member States in their follow-up to this report. In agreement with the Commission, ELTEG III will remain in existence to meet at least once a year to provide a forum to review the follow-up to this report and for Member States to exchange good practices.

2. CASH ACCEPTANCE

The discussion of cash acceptance by ELTEG III benefited from the replies to a dedicated questionnaire which covered the national legal frameworks on cash acceptance, cash acceptance by retailers/businesses/public authorities or sector entities in practice, and initiatives of national competent authorities regarding cash acceptance. Eighteen Member States provided written contributions[3] to the questionnaire.

National legal frameworks on cash acceptance

All responding Member States note that they do not have a specific national provision for legal tender status as such, but several do note that definitions can be found in other pieces of national legislation. AT, CY, DE, and GR explain that elements of a legal tender definition can be found in their respective Central Bank Act/Statute, and other Member States point to references in

[1] In the context of ELTEG, availability is to be understood as the access for citizens and business to withdrawal and lodgment cash services.

[2] ELTEG III met on 28.04.21, 30.09.21, 27.01.22, 24.03.22 and 31.05.22. The summary records of these meetings and the key documents of the group can be found on the Commission's web site at: https://ec.europa.eu/transparency/expert-groups-register/screen/expert-groups/consult?lang=en&groupId=3754&fromMembers=true&memberType=4&memberId=93719

[3] Austria, Belgium, Cyprus, Germany, Estonia, Finland, France, Greece, Ireland, Italy, Latvia, Luxembourg, Lithuania, Malta, the Netherlands, Spain, Portugal, Slovenia.

other national regulations such as the tax code (FI)[4], Civil Code (NL) and Criminal code (LU). Finally, four Member States (DE, LU, MT, PT) point out that they refer directly to the applicable EU legislation for a legal tender definition, such as Council Regulation (EC) No 974/98 on the introduction of the euro and the Commission Recommendation EU/2010/191 on the scope and effects of legal tender of euro banknotes and coins.

As to whether retailers can legally refuse cash payments (other than above cash payment limits), the legal modalities differ widely from one Member State to another, pointing to the complex relationship between legal tender and contractual freedom. In some countries cash may not be refused, whilst in others refusal to accept cash forms part of contractual freedom, if parties agree on another form of payment.

The legal dichotomy between compulsory acceptance and contractual freedom can also be found in the Member States' differing approaches as to whether retailers have to inform customers in advance (i.e., on the shop window, at the counter) of the payment modalities. In some Member States no statutory provision exists, but, a common understanding on the elements of the contract is a prerequisite for its conclusion. It is customary that retailers provide information on payment modalities in advance (for example in the Terms and Conditions) as a "pre-contractual information duty" (AT, BE, DE, IE, PT, LV, LT). Member States also point to the obligation (GR, IE, NL, LT) for a retailer to have a label at the entrance door/inside the shop stating the payment modalities that are accepted. For example, labels can refer to "no cash payments accepted", or "electronic payments/PIN only".

Six Member States (FR, ES, IT, EE, LU, SI) report that they have national provisions penalising refusal of payment with legal tender notes/coins. Unilateral refusal of acceptance can entail breaches of the criminal code (FR, LU[5]), the Euro Introduction Act (SI), consumer protection acts (EE, ES), or the Civil Code (IT) and can in some cases lead to administrative sanctions and fines (ranging from 30 to 120.000 euro)[6]. Other Member States note that, according to the principle of freedom of contract, traders and retailers are in principle free to decide on what terms they wish to conclude a contract, but that refusal to accept cash if no other means of payment are agreed upon by the parties can lead to a breach of contract/incurrence in default of acceptance as the only legal consequence.

Three Member States (GR, IT and NL) noted that other means of payment may be considered to have a "quasi" legal tender status. In Greece, it "has become mandatory for professionals/sectors enumerated in relevant Ministerial Decisions to accept electronic payments, i.e. payments by card, through a POS terminal mandatorily installed in their place of business." In the Netherlands "the Dutch Civil Code holds that payment through the banking system is a valid means of discharge of a monetary debt unless the creditor has validly excluded this payment on a bank account." Finally, in Italy, "payments above the limits set out by law must be carried out through traceable means of payment." Furthermore, Belgium and Cyprus mention that their respective governments are thinking to introduce an obligation for selected

[4] The national regulation of tax code in Finland provides the right to pay taxes in cash and does not include definition of legal tender.
[5] The Luxembourg criminal code provides that non acceptance of cash will be punished only if payment has not been otherwise agreed between the parties through another means of payment.
[6] At the meeting of ELTEG on 28/04/2021, two Member States reported that although the possibility to impose sanctions or fines for failure to accept cash existed in national law, it was difficult if not impossible for such sanctions to be imposed in practice.

retailers or businesses to offer at least one electronic payment means. However, at this moment, none of the responding Member States report an obligation for retailers or businesses to accept at least two different payment methods when customers pay for goods/services.

In a follow-up questionnaire (which mainly addressed cash availability), Member States were asked to provide further details on their national frameworks on cash acceptance in light of the preliminary judgment of the CJEU[7]. Regarding the consequences of the preliminary judgment of the CJEU on the existing national provisions, none of the Member States note any consequences to their existing national provisions in the questionnaire. The Commission recalled that monetary law is an area of EU exclusive competence. Member States whose currency is the euro are not empowered to have rules on monetary law including legal tender. This is without prejudice to the competence of the Member States whose currency is the euro to regulate, outside the scope of monetary law, the procedures for settling pecuniary obligations, whether under public law or private law, provided, in particular, that the legislation does not affect the principle that, as a general rule, it must be possible to discharge a payment obligation in cash, in line with Article 128(1) TFEU as interpreted by the Court of Justice. National rules should not create a doubt about the legal source of the EU exclusive competence: they should always refer to Article 128(1) TFEU. In view of loyal cooperation, Member States are encouraged to 'clean up' their national rules to ensure legal certainty.

As to the existence of legal gaps or a lack of legal certainty that would need to be addressed by action at EU level as a result of the CJEU's judgment, five Member States (ES, IE, LT, SI, PT) indeed point to this risk, whereas thirteen Member States replied negatively.

<u>Information on cash acceptance by retailers/businesses/public authorities in practice</u>
Some Member States (FR, ES, NL) report that they have undertaken or have access to studies or acquired data on non-acceptance of cash by businesses and retailers. France reports that a survey on cash acceptance by businesses was carried out in 2020/2021 in relation to the Covid-19 pandemic. Checks were carried out at 1,286 businesses. The checks showed that the majority of merchants accepted cash payments. "The anomalies observed, in a very limited number (around 2% of businesses inspected), were the subject of appropriate action (warning, injunction to comply with regulations)." Spain points to their 2020 National Survey on Cash Use, which asserts that "cash is accepted in 99.3% of retail establishments in Spain; it is also accepted in stores of all the large distribution chains, despite their recommendations to use cashless means of payments preferentially." The Netherlands highlights two studies undertaken by the Dutch National Bank and confirms that "The outcomes from the telephone surveys [as part of these studies] have been validated in practice in a field study in 2021." This latter study involved visits to 5,300 stores, bars, restaurants and hotels, libraries and market stalls. In at least 3% of stores the retailer pursues a card-only policy. 27% of retailers use promotional materials to encourage consumers to pay electronically. Finally, several Member States point to their respective Member States' results in the 2020 ECB SPACE study[8].

Looking more closely at the replies on non-acceptance of cash payments by businesses, retailers or central/local authorities in the individual Member States, none of the Member States' replies point to current problems regarding the acceptance of cash (in general, including by retailers). Several (DE, CY, ES, FI, IE, LT, NL, PT) point to some cases of cash non-acceptance which

[7] Joined Cases C-422/19 and C-423/19, *Dietrich and Häring* v *Hessischer Rundfunk*, Judgment of the Court (Grand Chamber) of 26 January 2021.
[8] https://www.ecb.europa.eu/pub/pdf/other/ecb.spacereport202012~bb2038bbb6.en.pdf.

are further detailed below, but the vast majority of replies suggest that cash acceptance is generally still widespread in their respective Member States.

Non-acceptance of cash is reported to be rare everywhere, but slightly more prevalent in urban areas than rural areas (AT, ES 1% urban versus 0,5% rural; FI, LT, NL). In terms of prevalence of cash non-acceptance in certain retail/business sectors/public sectors and the influence of size/type, Austria and Finland note that smaller businesses (e.g., retailers) are where cash payments are used the most, but at the same time, Finland finds that "smaller shops, kiosks and cafeterias are more prone to refuse to accept cash than bigger businesses". Germany confirms that cash non-acceptance is very rare in both small and large retailers, but that "there are some cafés with young, urban customers, where only non-cash payments are accepted on the basis of general terms and conditions.". Lithuania sees that non-acceptance is "more prevalent in catering, medical care sectors, e-commerce", while the Netherlands sees more non-acceptance in the entertainment (6%), hospitality (5%) and retail pharmacy sectors (10%). Spain adds that "that large retailers recommend the most to pay by cashless methods, but this has not been translated into the acceptance in itself."

Regarding cash non-acceptance by public authorities, Germany (federal and state taxes), Finland (public transportation, libraries, the Finnish Patent and Registration Office and some waste stations), Spain (national heritage sites) and the Netherlands (public transport[9], some cultural institutes and a few municipalities) report that some public authorities have in place no cash payment policies.

With regard to the reasons why businesses/public authorities, refuse payments in cash, almost all Member States point to security (risk of robberies, counterfeiting, internal fraud etc.) as the most commonly stated reason. Refusal of high denominations is also commonly mentioned (for example by petrol stations), for security reasons (theft, counterfeiting) but also for convenience reasons (i.e., low value payments with high value denominations affecting the Good Faith Principle, lack of change). Germany and Finland point to anecdotal evidence on high cash handling costs as a reason for non-acceptance. Finally, the Netherlands confirms that a lack of adequate cash lodgment facilities (infrastructure, modalities, access, high fees) is raised as a reason by retailers/authorities to not accept cash. However, Germany also notes that "especially in rural areas, there are some complaints that the decrease in the number of bank branches makes the management of cash especially for small businesses more difficult/costly", and Finland also confirms that "limited cash services offered by banks leads to a situation where lodgment of cash by retailers may both be cumbersome and expensive". Sanitary/hygiene reasons for eschewing cash payments are also mentioned throughout the survey, especially in combination with the risk of contamination in the COVID-19 pandemic (DE, PT, LV, NL, ES, FI). However, most responses note that in most cases, this resulted in strong recommendations to pay electronically and a decline in cash use rather than actual refusals to accept cash. The few reports of cash refusals (i.e. in France, around 2% of the 1,286 businesses checked in the survey carried out in 2020-2021) seem to be of a temporary nature only, in particular at the start of the pandemic (FR, AT, CY), although several Member States estimate the decline in cash use might evolve into a more permanent change of payment habits.

In terms of complaints received from citizens or consumer associations, most Member States state that they have either not received any, or only received very few complaints, usually of an

[9] Technically these are not public authorities.

anecdotal nature. PT, NL, IE and FI have received more regular complaints, from individuals or consumer organisations (FR), especially during the COVID-19 pandemic (FR, IE and NL).

Initiatives of national competent authorities regarding cash acceptance and electronic payments
Only the Netherlands and France point to a national initiative to monitor the acceptance of cash in the country. In April 2022, the Dutch Central Bank together with different parties involved in the cash cycle, representatives of retailers, and representatives of different consumer groups and organisations representing ‘’vulnerable groups’’ (elderly, visually impaired etc.) concluded a covenant in order to ensure the acceptance of cash and the availability of cash withdrawal and deposit facilities. Representatives of retailers agreed to advise their members to continue to accept cash, unless there are specific reasons not to do so (e.g., security)”. France reports that its authorities, in conjunction with market participants, are working within the Cash Industry Steering Committee to ensure that the retailers accept cash. The enforcement of the acceptability of cash is one of the five axes of the “National Cash Management Strategy”. All other Member States report no initiatives recently undertaken to encourage cash acceptance, although Belgium states that cash acceptance will be assessed and discussed in the Sub-group Cash of the National Retail Payment Committee. Furthermore, Estonia confirms that its central bank regularly communicates to the public in its press releases that cash is a safe and resilient means of payment and should be accepted everywhere without restrictions.
Ten Member States (BE, CY, ES, GR, IT, LT, LV, MT, NL, PT) report that they have undertaken initiatives (either recently or in the past) on the use of electronic payments. This was sometimes done in connection with the COVID-19 pandemic, contactless payments were considered to help prevent the transmissibility of virus. In Belgium, the government is considering introducing the obligation for retailers or businesses to offer at least one electronic payment means. France, on the other hand, points to the principle of freedom of choice and neutrality with regard to payment instruments, which means that the French authorities do not expressly promote one means of payment over another.

3. CASH AVAILABILITY

The ELTEG III Experts Group members discussed the topic of cash availability and provided written comments to a dedicated questionnaire launched by the Commission. This included questions on cash availability in practice from the perspective of consumers and small and medium-sized enterprises (SMEs), initiatives of national competent authorities regarding cash availability, and EU-level action regarding cash availability. Nineteen EU Member States have sent their replies to the questionnaire[10].

Information on cash availability in practice from the consumers’ perspective
Member States’ conclusion is that – in general – there is still a good level of access to cash throughout the euro area, but there is a need for continuous monitoring. Eighteen out of the nineteen responding Member States replied positively when asked about the existence of recent studies or data on availability of cash. Estonia is the only country saying that they do not have any new study on cash availability to report. Most of the Member States referred to the Eurosystem studies coordinated by the ECB on payment behaviors and density of cash access points, with a common methodology for analysing the density of cash access points within a country. Other studies undertaken recently by Member States concern the ATMs and bank branches networks and access to them, cash withdrawals and payments in urban and rural areas, complementary cash services outside the banking sector aimed, such as services provided by

[10] Austria, Belgium, Cyprus, Germany, Estonia, Finland, France, Greece, Ireland, Spain, Italy, Latvia, Luxembourg, Lithuania, Malta, the Netherlands, Portugal, Slovakia, Slovenia.

post offices and "cash-back" (i.e. cash advances) services provided by retailers. Several Member States note that the situation could be improved from the geographical and demographic points of view. One of the issues pointed out is that indebted people are more dependent of cash for daily payments. Another aspect mentioned is that neither the cash services provided by post offices nor the cash-back service could be considered equivalent to ATMs in terms of providing access to cash, and hence should be seen as complementary to the services to be offered by credit/depository institutions.

Member States have balanced views on the issue of limited/non-availability of cash in certain geographical areas: ten of them consider that such issues exist (BE, CY, FI, GR, IE, ES LV, PT, FR, LT) while nine do not currently see such issues (AT, DE, EE, IT, SK, MT, NL, LU, SI). The concerned areas are rural areas, or areas with low density of population.

In terms of access to cash depending on demographics, no clear conclusion can be drawn. While eight Member States consider that there are access to cash issues, in particular for elderly people, low earners, over-indebted people, people with lower education, and for the handicapped (BE, CY, IE, ES, LV, LT, FR, NL), four Member States consider that there are no such significant issues (AT, PT, MT, SI), and eight did not express a clear point of view on this topic (mainly because of a lack of data) (DE, EE, FI, GR, IT, LU, SK).

Member States' views about the impact of the reduction of the ATM infrastructure and closure of bank branches on cash availability are divided. While the general opinion is that there was a decline of ATM infrastructure in general, eight Member States consider that this has not been properly offset by the increase of alternative means of access to cash (BE, CY, ES, FI, IE, LV, LT, NL). Nine Member States have a different view, considering that cash availability is sufficient despite the decline of the ATM infrastructure and/or the closure of bank branches (AT, DE, GR, IT, LU, SK, SI, FR, MT). Italy made the point that "cash-in-shop" (i.e. cash advances without a purchase of goods/services) have the potential to be good complementary services to ATMs. DE said that this matter is not a problem now, but could become a problem in the medium term.

Member States have identified two main causes for the reduction of the banks' ATM infrastructure and closure of bank branches, namely cost reductions and reorganisations. Of the two reasons, the efforts to reduce costs is the most important and can be explained by the competition with online banks and the rise of digital services in banking, which enable credit institutions to shift their services from branches to online. The reorganisations are mainly determined by mergers in the banking sector, themselves often linked to efforts to reduce costs and increase profitability, which lead to branch closures in order to achieve efficiency gains.

The majority of Member States (thirteen out of nineteen) consider that fees currently imposed on cash withdrawals do not act as a barrier to cash availability. This is because in the wide majority of cases there are no direct fees for consumers on withdrawing cash. Even if some limited fees exist (for example, for amounts exceeding certain thresholds or for withdrawing cash form another bank's ATM), the majority of respondents do not consider these fees to act as a barrier to cash availability. Two Member States did not provide a clear answer (EE, LV), and three considered that these fees have a negative impact on cash availability (SK, CY – for example, because of these fees, citizens – especially the younger ones – decide to shift to e-banking and reduce their cash needs, LT).

As regards the measures to halt/reverse the reduction of the ATM infrastructure and the closure of bank branches, ten Member States (BE, CY, DE, EE, GR, FI, FR, LU, MT and SI) confirm that, while they are monitoring the situation, they consider that the situation of the availability of cash does not require taking measures at this juncture. Nevertheless, three out of these ten Member States (FI, IE and MT) can envisage measures in the future if faced with significant drops in the levels of cash access points, such as cash-back and cash-in-shop services, joint-use of ATMs and deposit facilities, binding regulations, or coordinating the relevant bodies into self-commitments, e.g., through the adoption of a Memorandum of Understanding (soft law approach). Slovenia confirms that they would consider taking action in case of a significant negative trend in cash access levels, while maintaining that an EU level approach would be more appropriate. Ten Member States (AT, ES, IT, LV, LT, IE, LU, NL, SK and PT) cite different measures they can think of or that they have already applied, such as: the expansion of independent ATM deployers, credit institutions' agreements with post office networks, local and regional administration subsidizing the deployment of ATMs in rural areas, mobile bank branches, minimum requirements for reachability and accessibility of cash through soft law, regular bilateral meetings with the banks and stakeholders, independent reports or agreements amongst private banks to improve cash deposit possibilities. The Netherlands mentions that the conclusion of a covenant agreement negotiated between the different parties of the payment system, coordinated by the central bank, is a solution for the short term only [11].

When it comes to alternative measures to help ensure sufficient cash availability, Member States mention more regulation (e.g. the competent authorities of the Member States may issue a directive/recommendations so that commercial banks do not disproportionately increase fees to their customers, as fees may act as a barrier), cash-back and cash-in-shop services, cash hubs, app-based cash services, post office branches providing cash deposits and withdrawal services in agreement with banks, making sure retailers have change money for customers, regular monitoring, and mapping of cash demand points. Portugal mentions that a paramount initiative underway is the mapping of cash demand points, in order to assess existing gaps between supply and demand for cash services. Three Member States (FI, LV, and LT) agree that, even if alternative measures were applied, they would be just a partial solution, as the ATM infrastructure remains the main provider.

Direct complaints to the NCBs or ministries from citizens or consumers' associations regarding the non-availability of cash are reported by seven Member States (BE, DE, FI, IE, LT, LU and PT). Some of these complaints were also reported in the media. Eight Member States (AT, CY, ES, FR, GR, IE, NL and SI) report indirect complaints through media reports, protests organised in small villages against the closure of bank branches, the organisation of platforms through which citizens and associations raise their voices in favour of adequate access to cash, or Parliamentary questions. Five Member States did not receive any such complaints (EE, IT, LV, MT, SK).

Ten Member States (BE, CY, DE, GR, IE, FI, LU, LV, NL and PT) report that the Covid pandemic had little effect on cash availability, through the reduction of the use of cash and cash withdrawals and the increase in electronic payments, and the closing of ATMs. In one Member State (ES), the pandemic could be one of the causes, that, among others like the rising trend towards digitalisation, accelerated the closure of bank branches and ATMs, and in addition the number of bank branches that do not offer cash services is increasing. This results in both consumers and small and medium-sized enterprises (SMEs) having difficulties to deposit cash

[11] On 7 April 2022, the covenant agreement was signed by 23 organisations and sent to the Ministry of Finance.

on their bank accounts. Eight Member States (AT, EE, FR, IT, LT, MT, SK and SI) report no effects of the Covid pandemic on cash availability.

<u>Questions regarding small and medium-sized enterprises (SMEs)</u>

In terms of complaints received from the SMEs on cash deposit services, seventeen Member States (all but NL and SI) do not report having received any complaints, out of which four (BE, FI, LT, MT) are aware of existing problems and are discussing them with the relevant stakeholders or are envisaging measures/investigating the situation. SI received a few complaints regarding fees in the past. Consequently, the Slovenian central bank organised a joint cash centre with the largest commercial bank and took over an approximately 50% share of cash processing in Slovenia, being thus able to reduce processing and transportation costs. NL received consistent complaints and, as mentioned, a covenant agreement among stakeholders was concluded in April 2022, in order to agree on minimum service levels.

When it comes to complaints from the SMEs on access to cash, eighteen Member States did not receive any complaints, while the majority of them are either aware of issues and discussing them with stakeholders, or monitoring the situation. The issue for the retail sector is having less ATMs (or less bank branches), which makes it more difficult to get change notes, while the SMEs do not want to order change money because of the fees, and are asking instead customers to bring coins. One Member State (NL) received complaints about the availability of EUR 5 banknotes. Therefore, in the covenant it has been agreed that banks provide this denomination via at least 200 ATMs (5% of total number of ATMs).

<u>Initiatives of national authorities regarding cash availability</u>

Regarding the adoption of laws or promotion of stakeholder agreements on cash availability, the majority of respondents noted that they are not undertaking any legislative actions for the moment. However, several Member States (BE, CY, FI, GR, LV, LT,NL) note that they have, or are in the process of setting up stakeholder agreements and/or covenants on access to cash, memorandums with stakeholders, recommendations on fees, or other policy measures. For example, Greece notes that in November 2019, following an intervention of the Government, banks agreed not to charge disloyalty fees to their customers for the use of ATMs in remote areas and islands, where they do not operate their own ATMs. This means that there are practically no disloyalty charges at ATMs in remote areas. Conversely, Germany responded that its competition authority (Bundeskartellamt) concluded that it is not in the interest of consumers that the level of fees are regulated. It argues that a fee which is set too low might in the end threaten cash access for the public as it is to be expected that such a regulation would lead to no more ATMs being maintained at certain locations. The Netherlands notes that in order to induce banks and retailers to cooperate towards a stakeholder agreement, “a threat of legislation” regarding cash availability and acceptance turned out to be necessary.

Three Member States (FR, LV, SI) note that the legal measures that may be necessary should be followed up/implemented at EU level, as this could guarantee a level playing field and coordinated response within the euro area. The other Member States do not indicate need for action at EU level, with several pointing to the heterogeneous circumstances from one country to another, and questioning the feasibility of an EU response, e.g. an EU-wide stakeholder agreement.

Member States mention several other initiatives that are taken by national administrations to ensure cash availability, such as:

- Communication campaigns;

- Cash through post offices;
- Guiding principles for maintaining relevant and equal cash services;
- Local subsidizing of ATMs;
- Mobile ATM units in remote areas;
- National cash management policies to guarantee freedom of payment choice.

EU-level action regarding cash availability

As for the consideration as to whether EU-level action regarding cash availability is warranted, the responses of the Member States are divided, reflecting different perception of the situation of cash availability. Nine Member States (AT, CY ES, FR, FI, LV, LT, SK, PT) affirm that EU-level action is warranted, IE is not opposed to EU action, whilst eight Member States (BE, DE, EE, GR, IT, LU, MT, SI) do not feel EU-level action is warranted (The Netherlands responded N/A due to the process of concluding a covenant at that moment), with some of them urging caution in the light of important cross-country differences. However, among the Member States currently not calling for action at EU level, two (MT and SI) emphasise that, while action is not needed now, the situation could evolve relatively rapidly in the future. Therefore, a continued reflection is needed as to how to approach the issue of cash availability in a creative and pragmatic way.

Some changes could be made at a technical level, as among others facilitating the provision of cash-back with and without a purchase (cash-in-shop services), or possibly improving statistical reporting on Eurosystem level with a view to distinguishing between cash-in-shop and cashback. The upcoming PSD2 review is also referred to as an occasion to address if any regulatory changes are warranted to facilitate cash-in-shop services in particular, or cash-back without a purchase. Potential EU-level communication measures were raised by Austria, and supported by Belgium, Slovenia and Spain, as the legal tender definition is vague and clarification is needed across the EU and not only at national level.

4. Digital euro and its implications on the legal tender of cash

The Commission is in the assessment stage of preparing a legislative proposal to establish a digital euro and regulate its essential elements so that it can be issued by the European Central Bank. This would be a digital form of central bank money, which is intended to complement cash, not to replace it, and respond to the need to ensure that citizens can continue to access and use central bank money in the digitalising EU economy, thereby supporting confidence and choice. A digital euro should ensure a continuous supply and use of central bank money, also in a digital form, while ensuring the effectiveness of the legal tender status, acceptance and availability of cash. In order to ensure the widespread availability and acceptance of a digital euro, the Commission could consider proposing that a digital euro receives legal tender status, defining its meaning and any related exceptions in line with the jurisprudence of the Court of Justice. The relevant provision should be included in the Commission's upcoming framework legislative proposal to establish a digital euro based on Article 133 TFEU[12]. Furthermore, as noted by France, should a digital euro be implemented, and depending on the legal tender status it may be given, further reflection could be required on whether it would be necessary to adapt

[12] Germany considers that such a proposal may only contain provisions in the field of monetary law, and that provisions that go beyond monetary law, e.g. regulations with a harmonizing character concerning private law require another legal basis (e.g. Article 114 TFEU). The Commission recalls that Article 133 TFEU empowers the European Parliament and the Council to lay down the measures necessary for the use of the euro as the single currency.

the legal framework applicable to cash in the interests of coherence. In parallel with a possible legislative initiative explicitly granting legal tender to the digital euro, ELTEG considers that the Commission should also consider regulating the legal tender status of euro cash. It would seem incoherent in policy terms to define in EU legislation the legal tender for the digital euro, while a parallel definition is not provided for euro cash. Any such definition of legal tender status, at any rate for banknotes, must respect the definition given by the CJEU in its case law (Joined Cases C-422/18 and C-423/10, *Dietrich and Häring v Hessischer Rundfunk*, judgment of 26 January 2021).

5. Draft Principles of ELTEG III

I. Acceptance of euro cash

1. ELTEG reiterates the fundamental principle that, where a payment obligation exists, the legal tender of euro banknotes and coins should imply mandatory acceptance, at full face value (and without additional charges), with the power to discharge from payment obligations. This is without prejudice to the possibility for the parties to a contract to freely agree on a particular payment method and the competence of Member State authorities, outside the field of monetary law, to introduce exceptions as long as they are compatible with Article 128(1) TFEU, as interpreted by the Court of Justice.
2. The acceptance of euro banknotes and coins as means of payments in retail transactions and payments of charges due to public entities should be the rule. Refusals thereof, in line with the case law of the CJEU, should be justified by reasons of public interest and insofar as the principle of proportionality is respected. For example, justified exceptions could be related to the ‘good faith principle’ (e.g:, a very large denomination banknote tendered for a micro payment), if a payment in cash is clearly not suitable to the kind of transaction (e.g:, in the context of online commerce or online public services) or if national law establishes limits for cash payments in pursuit of public reasons (e.g:, anti-tax evasion or anti money laundering purposes). Should the Commission decide to present a legislative proposal to regulate the legal tender of cash, this could make explicit the possible exceptions to the principle of mandatory acceptance, as long as it respects the conditions laid down by the Court of Justice. It could also include a procedure empowering the euro area Member States, pursuant to Article 2(1) TFEU, to introduce rules of a monetary law nature that would establish additional but limited exceptions to the principle, on condition that they are justified and proportionate, and subject to approval by the Commission, and after consulting the ECB (based on Articles 127(4) and 282(5) of the TFEU). In areas of shared competence (to the extent the Union has not exercised its competence), or in the exercise of competences retained by the Member States (see Article 5 (2) TEU), the Member States already have the power to introduce national rules that restrict the principle of mandatory acceptance. Their compatibility with Union law depends on whether they are justified on grounds of general interest and proportionate to the end pursued. Payments in cash can also be subject to requirements in line with EU legislation on combatting money laundering and tax evasion.
3. The Commission will consider whether to present a legislative proposal to regulate in more detail the legal tender of cash. This assessment could also cover in so far as it is necessary to ensure the use of the euro as a single currency and if it constitutes a proportionate restriction to the freedom to conduct business, the prohibition of ex ante unilateral imposition of exclusion by retailers in physical transactions of payments in

euro cash, including no-cash policies in certain circumstances, to be enforced through administrative sanctions. This prohibition would not apply in e-commerce. It would also be without prejudice to the possibility for parties to a contract to freely agree on a particular payment method.

4. Member States should continue to closely monitor, further analyse and report on cash acceptance and availability of cash in their respective countries.
5. Member States should provide citizens and businesses 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 cash non-acceptance.

II. Availability of euro cash (withdrawal and deposits)

6. Ensuring the ease of availability of euro cash is key to making a reality in practice of the legal tender status of cash, because if citizens do not have access to cash they will not be able to pay with it and its effective legal tender status will be undermined. Moreover, citizens should have good access to their money and be able to withdraw their deposits in central bank money according to their needs/preferences. While several Member States are concerned about the impact on the availability of cash of the reduction of ATM coverage and the reduction of cash services at bank branches, others consider that access to cash remains good despite these trends. Where appropriate, measures should be taken at the appropriate level to mitigate the risks from the reduction of ATM coverage and cash services of banks and assess the evidence supporting this trend, including evidence on the evolution of demand for cash and taking into account the varying levels of cash usage in Member States. These measures should ensure that credit institutions holding payments accounts for citizens and businesses continue to provide essential banking services and cash withdrawal and lodgements facilities throughout the euro area, also at local community level. If appropriate the Commission should assess the need for measures at EU level to ensure minimum coverage of ATM networks, taking into account the evolution of the demand for cash.
7. Member States should closely monitor the coverage of sufficient and safe deposit facilities, ATM networks and additional cash access points at bank branches, especially the closure of such facilities, as well as other complementary initiatives such as at retailers offering cash-back[13] or cash-in-shops[14] in their respective countries, both in terms of cash withdrawals and deposits, and their accessibility for customers (account holders) and non-customers.
8. Policy measures should be taken at the appropriate level to ensure that euro cash availability and cash lodgements on bank accounts, as services of general interest and cash deposit facilities, are guaranteed throughout the territory of the euro area. These measures can take different forms, including stakeholder agreements and/or covenants on access to cash services, memorandums with stakeholders, recommendations on fees, communication campaigns or other, including legislative policy measures. ATM access for citizens and coverage of the ATM networks should be assessed by using quantitative indicators, for example by taking into account the distance and population density as well as the banks' or post offices' additional cash service points at their branches.
9. Member States should closely monitor and report to ELTEG and the Commission unjustified and/or disproportionate cash withdrawal/deposit fees, e.g. fees for use of

[13] Cash-back: A cash withdrawal at the retailer's checkout which is debited to the customer's account and is made in conjunction with a purchase of goods or services.

[14] Cash-in-shop: A cash withdrawal or deposit at the retailer's checkout which is settled through the customer's account and is not being linked to a purchase of goods or services.

ATM's of banks and independent ATM deployers, fees for non-account holders, and extra fees over a threshold number of free withdrawals/deposits per month/year and other attempts of banks to discourage the use of cash. If appropriate the Commission should assess the need for measures at EU level on such fees also taking into account the obligations under Regulation 2021/1230 regarding cross-border ATM withdrawals[15].

10. ATM pooling or mutualisation projects of banks should be monitored by Member State authorities, e.g., through protocols.
11. Apart from the main ATM and bank branch infrastructure, other possible channels for cash withdrawals and deposits outside the banking sector have the potential to complement the cash services of banks, although their inherent limitations exclude that they could work as a replacement of ATM networks or cash services at bank branches. Therefore, solutions such as cash-back, cash-in-shop services with or without a purchase, and cash withdrawals/deposits in post offices need to be considered to provide for a comprehensive provision of cash services. These solutions, however, do not relieve banks from their social role to provide adequate cash services to citizens and business customers, with the needed geographical coverage. The provision of cash services by merchants and other non-banking entities would remain voluntary, based on their own business decisions. These other channels for cash withdrawals and deposits outside the banking sector are mainly to be seen as making access to cash more convenient and easier for consumers. Moreover, they are usually only suitable for certain types of transactions (lower value transactions).
12. In addition to policy and soft law measures at national and/or Union level, legislative improvements at Union level could be considered to further enhance availability of cash services to citizens and business customers in so far as this is necessary for the use of the euro as a single currency. Such improvements could for instance include measures to facilitate cash-in-shop services, based on the outcome of the PSD2 Review, possible harmonised EU legislative measures or an obligation on Member States to adopt implementing measures to ensure sufficient access to cash, including obligations/recommendations on banks or other relevant actors which are to be reported to the Commission and the ECB. These Union rules could be included in possible future EU proposal**s** with regard to the legal tender of cash and legal effects relating to its status on the basis of Article 133 TFEU.

III. Role of ELTEG in reporting and assessing best practices euro area wide

13. Member States are encouraged to inform each other via ELTEG of the measures taken to assure cash acceptance and availability as well as regulatory measures restricting the use of cash:

    a. For other Member States to learn from each other's best-practices;
    b. For the European Institutions to take stock of the measures taken and to make euro-area wide assessments of cash acceptance and availability.

[15] Application of Regulation 924/2009 on cross-border payments, available at: https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiglJO_iqr4AhVMtqQKHZVDAQgQFnoECA0QAQ&url=https%3A%2F%2Fec.europa.eu%2Finfo%2Fsites%2Fdefault%2Ffiles%2Fbusiness_economy_euro%2Fbanking_and_finance%2Fdocuments%2Fnote-application-cross-border-atm_en.pdf&usg=AOvVaw02bqKZ0Eh5SL--1aYuzNA2

14. At least once a year, ELTEG members should meet and report to the group on the actual situation regarding cash acceptance and availability in their respective Member States, their monitoring results, and the measures taken.

IV. Legal tender of euro cash

15. Monetary law is an area of EU exclusive competence. Member States whose currency is the euro are not empowered to have rules on monetary law including legal tender. This is without prejudice to the power of Member States to adopt rules in areas of shared competence (to the extent the Union has not yet exercised its competence) or in the competences they retained as referred to in principle 17.
16. The Member States should check thoroughly their national legislation for references to legal tender and repeal them or else, make sure that they are a) purely declaratory, referring to the applicable Union provisions as the applicable legal source, b) make no change to the wording of Article 128(1) TFEU or of other applicable EU provisions on the legal tender status of euro cash.
17. The European Union's exclusive competence in matters of monetary policy is without prejudice to the competence of the Member States whose currency is the euro to regulate the procedures for settling pecuniary obligations, whether under public law or private law, provided, in particular, that the legislation does not affect the principle that, as a general rule, it must be possible to discharge a payment obligation in cash in line with Article 128(1) TFEU as interpreted by the Court of Justice. Union or national rules on payment obligations that restrict legal tender in specific policy areas of shared competence or competences retained by the Member States should be justified on grounds of public interest and proportionate to the end pursued in line with the CJEU jurisprudence.
18. The Commission reserves the right to take steps against Member States which are non-compliant and might not have applied EU law correctly.
19. ELTEG welcomes the European Central Bank's work to map out the existing national provisions on restrictions to legal tender based on the survey conducted by ELTEG and the ECB Opinions issued on the draft legislative changes in this field.

V. Digital euro and its implications on the legal tender of cash

20. In case of an upcoming proposal for a digital euro, the Commission should reiterate to citizens the ECB's commitment that such a digital euro is intended to complement cash. The overall aim is to safeguard the supply of central bank money to the general public and provide a digital alternative to euro cash.
21. If legislation on the digital euro were to regulate its legal tender status, ELTEG considers that it would be in the interests of coherence and better law-making to also regulate the legal tender status of cash.
22. The baseline of any legislative proposal would be the codification of the CJEU ruling of 26 January 2021 on the key principles of legal tender: mandatory acceptance in principle, at full face value, with the power to discharge payment obligations, without prejudice to the competence of Member States whose currency is the euro to regulate the procedures for settling pecuniary obligations, whether under public law or private law. However, more detailed rules could be considered to ensure added-value and legal certainty whilst respecting the Court of Justice jurisprudence.

23. A possible Commission proposal of legal tender of cash should also draw on the Commission’s 2010 Recommendation on the scope and effects of legal tender of euro banknotes and coins as well as on the targeted consultation of 2022 on the digital euro.
24. When regulating the legal tender status of central bank money in its physical and digital forms, there is a need for coherence and consistency between the legal acts, as well as with other existing legislation. The Regulations do not need to be identical, since the concrete implementation of the key principles of legal tender can differ for physical and digital forms of money (e.g. the availability of change is not applicable in a digital context).
25. The digital euro and euro cash should be accessible (for citizens and businesses), generally accepted and easily exchangeable, at par, with one another within the euro area.

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