



2023/0208(COD)

11.1.2024

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DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council
on the legal tender of euro banknotes and coins
(COM(2023)0364 – C9-0216/2023 – 2023/0208(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Stefan Berger

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▬ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council on the legal tender of euro banknotes and coins
(COM(2023)0364 – C9-0216/2023 – 2023/0208(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2023)0364),
 - having regard to Article 294(2) and 133 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0216/2023),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A9-0000/2024),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation

Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) This Regulation should apply to payment obligations that give rise to pecuniary debts to be settled in cash. This Regulation should not apply to payments for goods or services purchased at a distance, whether online or through any means of distance communication.

Amendment 2**Proposal for a regulation****Recital 7***Text proposed by the Commission*

(7) With a view to an effective implementation of their obligation to ensure sufficient and effective access to cash, Member States should regularly monitor the level of access to cash throughout their territory, in all their different regions, including urban and non-urban areas, on the basis of common indicators which allow for comparisons between the Member States. Common indicators could include factors that affect access to cash, such as density of cash access points in relation to population, withdrawal and deposit conditions, including fees, the existence of different networks with different access modalities for customers, urban-rural and socio-economic variations, and access difficulties for certain population groups. If in the light of their assessment access to cash is deemed sufficient and effective on their territory, Member States would not need to adopt specific measures in relation to their respective obligation. However, they would need to continue monitoring the situation. If a Member State concludes that access to cash is not sufficient and effective in all or part of its territory, or is at risk of deteriorating in the absence of action, appropriate remedial measures should be taken to remedy the situation, such as geographic access requirements on payment service providers providing cash withdrawal services to maintain cash services at a sufficient number of their branch offices where they conduct business, or through an appointed agent for online only credit institutions, or maintain a sufficient density of automated teller

Amendment

(7) With a view to an effective implementation of their obligation to ensure sufficient and effective access to cash, Member States should regularly monitor the level of access to cash throughout their territory, in all their different regions, including urban and non-urban areas, on the basis of common indicators which allow for comparisons between the Member States. Common indicators could include factors that affect access to cash, such as density of cash access points in relation to population, withdrawal and deposit conditions, including fees, the existence of different networks with different access modalities for customers, urban-rural and socio-economic variations, and access difficulties for certain population groups. If in the light of their assessment access to cash is deemed sufficient and effective on their territory, Member States would not need to adopt specific measures in relation to their respective obligation. However, they would need to continue monitoring the situation. If a Member State concludes that access to cash is not sufficient and effective in all or part of its territory, or is at risk of deteriorating in the absence of action, appropriate remedial measures should be taken to remedy the situation, such as geographic access requirements on payment service providers providing cash withdrawal services to maintain cash services at a sufficient number of their branch offices where they conduct business, or through an appointed agent for online only credit institutions, or maintain a sufficient density of automated teller

machines (ATMs) where they conduct business taking into account a good geographic spread in relation to population, also taking into account possible pooling of ATMs. Other remedial measures could include recommendations addressed to non-credit institutions, such as independent ATM operators, retailers or post offices, encouraging to complement the cash services of banks.

machines (ATMs) where they conduct business taking into account a good geographic spread in relation to population, also taking into account possible pooling of ATMs. Other remedial measures could include recommendations addressed to non-credit institutions, such as independent ATM operators, retailers or post offices, encouraging to complement the cash services of banks. ***To facilitate monitoring by Member States, payment services providers and ATM providers should notify their national competent authority in writing of the closure of each ATM or bank branch and share an assessment of whether the sufficient and efficient access to cash remains guaranteed as defined by the common indicators. Where the level of access to cash is not sufficient and effective, the provider responsible for the closure should take measures to remedy that situation.***

Or. en

Amendment 3

Proposal for a regulation

Recital 9

Text proposed by the Commission

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

Amendment

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

ensuring that the principles of mandatory acceptance of payments in cash or sufficient and effective access to cash are not undermined.

ensuring that the principles of mandatory acceptance of payments in cash or sufficient and effective access to cash are not undermined. *When preparing those implementing acts, the Commission should consult the European Central Bank.*

Or. en

Amendment 4

Proposal for a regulation Recital 11

Text proposed by the Commission

Amendment

(11) In order to ensure that additional exceptions to the mandatory acceptance of euro cash may be introduced at a later stage if they are required, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to supplement this Regulation by introducing additional exceptions to the principle of mandatory acceptance for the euro area as a whole. The Commission may only adopt such additional exceptions if they are necessary, proportionate to their aim, and preserve the effectiveness of the legal tender status of euro cash. The power of the Commission to adopt delegated acts for the introduction of additional exceptions to the mandatory acceptance of accept euro cash should be without prejudice to the possibility for Member States, pursuant to their own powers in areas of shared competence, to adopt national legislation introducing exceptions to the mandatory acceptance deriving from the legal tender status in accordance with the conditions laid down by the Court of Justice of the European Union in the judgment in Joined Cases C-422/19 and C-423/19. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert

deleted

level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

Or. en

Amendment 5

Proposal for a regulation Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) Unilateral practices, such as the non-acceptance of cash payments by public entities, including public hospitals and public museums, have not been regulated procedures for the settlement of pecuniary obligations provided for in the national law of a Member State. They should be considered ex ante unilateral exclusions of cash.

Or. en

Amendment 6

Proposal for a regulation Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) In order to ensure that people and businesses benefit from a wide acceptance network and are able to use the digital euro effectively in their day-to-day payments, payees who are subject to the mandatory acceptance of payments in digital euro should not unilaterally

exclude payments in cash through contractual terms that have not been individually negotiated or through commercial practices.

Or. en

Amendment 7

Proposal for a regulation

Article 3 – paragraph 1 – point 4

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 8

Proposal for a regulation

Article 5 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

(b) where, prior to the payment, the payee has agreed with the payer on a different means of payment.

Amendment

(b) where, prior to the payment, the payee has agreed with the payer on a different means of payment, *in accordance with Article 5a*.

Or. en

Amendment 9

Proposal for a regulation

Article 5 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

For the purposes of point (b), the burden of proof to establish that such an

agreement existed in a particular case shall be on the payee.

Or. en

Amendment 10

Proposal for a regulation Article 5 a (new)

Text proposed by the Commission

Amendment

Article 5a

Prohibition of ex ante unilateral exclusions of cash

Payees subject to the obligation to accept euro banknotes and coins shall not use contractual terms that have not been individually negotiated or commercial practices, including ‘no cash’ signs, that have the object or the effect of excluding the use of euro banknotes and coins by payers of monetary debts denominated in euro. Such contractual terms or commercial practices shall not be binding on the payer. A contractual term shall be regarded as not having been 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 form contract.

Or. en

Amendment 11

Proposal for a regulation Article 6

Text proposed by the Commission

Amendment

Article 6

deleted

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

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

Or. en

Amendment 12

Proposal for a regulation Article 8 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Member States shall ensure sufficient and effective access to cash throughout their territory, in all their different regions, including urban and non-urban areas. In order to ensure sufficient and effective access to cash, Member States shall monitor access to cash throughout their territory, in all their different regions, including urban and non-urban areas, on the basis of the common indicators adopted by the Commission, ***weighted according to individual national indicators connected with national cash demand***, and shall assess the situation. ***Common indicators shall assess at least the following criteria:***

Or. en

Amendment 13

Proposal for a regulation Article 8 – paragraph 1 – point a (new)

Text proposed by the Commission

Amendment

(a) the access to ATMs including the geographical distance by road and public transport and the number of ATMs in relation to population density;

Or. en

Amendment 14

Proposal for a regulation

Article 8 – paragraph 1 – point b (new)

Text proposed by the Commission

Amendment

(b) the availability of ATMs for cash deposits and cash funding of digital euro accounts;

Or. en

Amendment 15

Proposal for a regulation

Article 8 – paragraph 1 – point c (new)

Text proposed by the Commission

Amendment

(c) the availability of banknotes of different values at ATMs;

Or. en

Amendment 16

Proposal for a regulation

Article 8 – paragraph 1 – point d (new)

Text proposed by the Commission

Amendment

(d) the availability of cash services over the counter including opening hours of bank branches;

Or. en

Amendment 17

Proposal for a regulation

Article 8 – paragraph 1 – point e (new)

Text proposed by the Commission

Amendment

(e) the accessibility of ATMs and bank branches in line with Directive (EU) 2019/882; and

Or. en

Amendment 18

Proposal for a regulation

Article 8 – paragraph 1 – point f (new)

Text proposed by the Commission

Amendment

(f) the charges for cash services at ATMs and over the counter.

Or. en

Amendment 19

Proposal for a regulation

Article 8 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. ATM providers and payment service providers who intend to close a bank branch or an ATM shall perform a detailed impact assessment based on the common indicators to ensure that sufficient and effective access to cash remains guaranteed after the closure of the bank branch or ATM. They shall notify their findings to their national competent authority in writing. Where the level of access to cash is not sufficient and effective, the provider responsible for the closure shall take measures to remedy that situation.

Or. en

Amendment 20

Proposal for a regulation Article 9 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 21

Proposal for a regulation Article 9 – paragraph 4

Text proposed by the Commission

4. If a Member State considers that the **level of** acceptance of payments in cash **undermines mandatory acceptance of euro banknotes and coins** or that sufficient and effective access to cash is not ensured, it shall indicate in its annual report the remedial measures it commits to take in order to comply with the obligations set out in Articles 7 and 8. The remedial measures shall enter into force without undue delay.

Amendment

4. If a Member State considers that the **mandatory** acceptance of payments in cash **is undermined** or that sufficient and effective access to cash is not ensured, it shall indicate in its annual report the remedial measures it commits to take in order to comply with the obligations set out in Articles 7 and 8. The remedial measures shall enter into force without undue delay.

Or. en

Amendment 22

Proposal for a regulation Article 9 – paragraph 5

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 23

Proposal for a regulation Article 10 – paragraph 2

Text proposed by the Commission

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

Amendment

2. The power to adopt delegated acts referred to in Article 6 shall be conferred on the Commission for ***a*** period of ***five years*** from [date of entry into force of this Regulation]. ***The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of each five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament***

or the Council opposes such extension not later than three months before the end of each period.

Or. en

Amendment 24

Proposal for a regulation Article 10 – paragraph 3

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 25

Proposal for a regulation Article 10 – paragraph 6

Text proposed by the Commission

6. A delegated act adopted pursuant to Article 6 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of *one month* of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by *one month* at the initiative of the European Parliament or of the Council.

Amendment

6. A delegated act adopted pursuant to Article 6 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of *three months* of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by *three months* at the initiative of the European Parliament or of the Council.

