INTERNATIONAL MINT INDUSTRY ASSOCIATION

IMIA POSITION PAPER 2023/02

Position of the International Mint Industry Association (IMIA) on the European Commission's draft Regulation on the Legal tender of euro banknotes and coins [Com (2023) 364 Final]

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1. EXECUTIVE SUMMARY

The International Mint Industry Association (IMIA) calls for clarity on whether the European Commission's legislative proposal on the legal tender of euro banknotes and coins ('Proposal') implies and guarantees euro cash payments acceptance obligation at point-of-sale, including government and public services as well as automated check-outs. The IMIA is concerned that the obligation for Member States to only intervene with remedial measures when a *level* of non-acceptance of payments in cash undermines the *principle* of mandatory acceptance implies that ex ante unilateral exclusions of payments in cash are not per se prohibited, as long as refusals of cash payments are not 'widespread and structural'.

The Proposal is notably inconsistent with the proposed legal tender status implications for the digital euro, where, apart for microenterprises and private citizens, unilateral exclusions of payments in the digital euro are outright prohibited across the eurozone, and non-acceptance shall be penalised. The IMIA argues that it is crucial that legal tender status of euro cash should not be discriminated but consistent to the legal tender status of the digital euro.

Furthermore, the Proposal suggests annual monitoring and reporting processes for both acceptance obligation and access to euro cash that are to IMIA's view unclear. The IMIA is concerned for instance that the proposed annual frequency of monitoring and reporting might be too slow to prevent the dismantling

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of euro cash infrastructure. It is further unclear whether yet to be defined 'common indicators' are to be set as the minimum standard. Member States should have the right based on national rules to both protect the existing level of cash acceptance and access and impose higher standards.

2. INTRODUCTION

The International Mint Industry Association (IMIA) welcomes the intention of the European Commission's legislative proposal on the legal tender of euro banknotes and coins ('Proposal') to ensure that "the physical form of central bank money, euro cash, remains present, available and accepted by all euro-area residents and enterprises." The IMIA agrees that the current legal tender status of euro cash does not guarantee reliable and universal acceptance of cash as well as wide and easy access to cash for eurozone citizens and businesses. Euro cash is not only the sole *physical* form of money, but also the only form of central bank money available to the public.[1] It is also the only form of money citizens can hold directly, without any third-party involvement. However, euro cash infrastructure is deteriorating across the eurozone.

The IMIA agrees, as stated in the legislative proposal on the establishment of the digital euro, that the acceptability and fungibility of commercial money relies on its convertibility on a one-to-one basis to central bank money with legal tender, which serves as monetary anchor. Therefore, without imminent protective legislative measures significantly strengthening the status of legal tender of euro cash, as well as effective enforcement of these measures, eurozone economies and their citizens might lose central bank public money infrastructure. With it they would lose an established, trusted and widely-adopted payment method as well as store of value instrument underpinning both national financial stability and resilient payment systems.

Euro cash guarantees and preserves individual financial autonomy and privacy of eurozone citizens. Only with cash a person can directly make a payment, and without any services provided by another body. Euro cash as a type of central bank public money payments product possesses unique attributes not replicable with digital euro: cyber-resilient personal data safety and privacy, universal inclusivity, crisis-resilience with respect to e.g. natural disasters and electronic hacking, unlimited store of value function, and tangibility and physicality giving citizens self-reliant autonomy. Cash is the only form of money, which can be stored by citizens independently and autonomously without any store of value holding limits. This non-restricted

[1] Crucially, according to the latest Eurostat data "the vast majority of retail sales in the EU continue to take place in shops." – latest Eurostat data. https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Digital_society_statistics_at_regional_level#E-commerce

store of value function, both in terms of volume and non-dependency on requiring a bank account, provides citizens with freedom, autonomy and agency in any day-to-day situation.[2]

The IMIA further argues that it is crucial that legal tender status of euro cash should not be discriminated but consistent to the legal tender status of the digital euro. For the digital euro to be indeed a complementary and an additional form of public money, as intended, both types of central bank public money need to be treated consistently and provided with a level playing field in terms of regulatory measures, enforcements and institutional support. Otherwise there is a risk of crowding out or replacement of physical public money – EU governmental bodies risk being seen as unequally pushing citizens to adopt digital euro, irrespective of preferences or need.

It is indeed the case that for digital euro to be a successful central bank public money payment option in terms of wide adoption by, and attractiveness for, consumers that sufficient access and mandatory acceptance need to be guaranteed. Without sufficient support for euro cash its infrastructure might effectively fall below a functional tipping point and the trust in central bank public money risks being significantly undermined. This would have knock-on effects for the potential introduction and potential, but not guaranteed, wide-ranging adoption of digital euro.

3. LEGAL TENDER

(Article 3 – Definitions + Article 4 – Legal tender + Article 5 – Exceptions to the principle of mandatory acceptance of euro banknotes and coins + Article 6 – Additional exceptions to the principle of mandatory acceptance of euro banknotes and coins)

The IMIA welcomes that the Proposal addresses the 'ex ante exclusions of cash', which means a situation where a retailer or a service provider unilaterally, without a bilaterally and individually negotiated agreement, refuses any payments in cash, e.g. by displaying a 'no cash' or 'cards only' sign at their premises. These general conditions of a retailer or service provider seriously endanger the legal tender status of euro banknotes and coins. However, the draft Proposal is not clear in this context, as these ex-ante exclusions are not prohibited, similarly as they are for the digital euro in legislative proposal on the establishment of the digital euro. Merely requiring Member States to monitor to which extent such "no-cash policies", or

[2] In comparison, the digital euro proposal envisages a €3,000 store of value limit as well as the related 'waterfall functionality', where holdings of digital euro above the set holding limit would automatically need to be exchanged to private money and transferred to a bank account, making the digital euro as a form of central bank money ultimately dependent on holding a commercial bank account and not a universal payment method such as euro cash.

"less cash policies, are applied, and if they become too widespread then Member States should remedy the extent of cash non-acceptance by regulatory measures is confusing and inconsistent.

The IMIA is concerned that the definition of 'enterprise' may not include point-of-sale payment obligations/use cases of retail payments such as person to government, person to local government or person to government-funded institution.[3] The explanatory memorandum of the Proposal[4] rightly highlights the social inclusion aspect of access to cash. However, social inclusion is equally important in terms of cash acceptance. Those who choose to pay with euro cash should not be excluded for instance from participation and access to for instance public transport[5], public parking spaces, public libraries, public sport facilities, museums, cinemas and public health facilities.

The definition of 'enterprise' should also include temporary point-of-sales such as music festivals, sports meetings, and other event-based activities. It has been noted that those events use more and more cashless systems on site, to access food, drinks or souvenirs[6].

The IMIA welcomes that the proposal seeks to clarify and enhance legal certainty of the implication of the legal tender status of cash as set out in the 2010 Recommendation as entailing mandatory acceptance, at full face value, with the power to discharge from a payment obligation, which shall not be refused by the payee. The IMIA would like to note that for legal tender status of euro banknotes and coins to imply mandatory acceptance is appropriate, as cash is the only form of money which can be accepted and stored independently and autonomously, in regard to the volume stored as well as free from any reliance on third-party providers, contracts, smart phones or any other gadgets.

The IMIA suggests that it would be beneficial to further clarify and strengthen the legal tender status mandatory acceptance implication by including an equivalent requirement as per the digital euro proposal: Payees subject to the obligation to accept euro cash 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 euro cash by the 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 individually

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[3] In comparison, the legislative proposal on the establishment of the digital euro, clearly states in Recital (4): "the digital euro should support a variety of use cases of retail payments. Those use case include person to person, person to business, person to government, business to person, business to business, business to government, government to person, government to business, and government to government payments."
[4] "To support social inclusion, including in the context of the European Pillar of Social Rights. It aims to ensure that everyone in the euro area has sufficient and effective access to cash."
[5] https://www.rbb24.de/panorama/beitrag/2023/01/berlin-bvg-bus-bargeld-corona.html
[6] Paiements : le cash de moins en moins utilisé dans les festivals | Les Echos

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.

4. ACCEPTANCE OF PAYMENTS IN CASH

(Article 7 – Acceptance of payments in cash + Article 9 – Procedural aspects)

The IMIA welcomes in principle the legal obligation for Member States to regularly monitor and report on the level of ex ante unilateral exclusions of payments in cash in their entire jurisdictions. To date, monitoring of cash payments refusals at point of sale has lacked frequent and systemic pro-active data gathering. For instance, in Member States with non-cash acceptance penalties, such as France, the "CNMP [Comité National des Moyens de Paiement] has been informed of occasional cases of refusal of cash by shops open on Sundays"[7], rather than collected breaches to mandatory acceptance of euro cash itself. The ECB launched its first ever Companies' Survey on Cash in 2021, which questioned companies about their use of cash and their intention to keep accepting cash. Though useful and important, the results do not offer a granular eurozone-wide database on cash non-acceptance; the total sample consisted of 7,271 interviews.[8] In comparison, the Dutch central bank's commissioned survey inspected 4,300 shops, a significantly large sample given the size of the Dutch vs eurozone economy.[9]

The IMIA proposes two measures Member State authorities as well as the European Central Bank and the European Commission should take to achieve accurate and frequent monitoring of breaches to mandatory acceptance of euro cash. Firstly, authorities should invest in raising awareness[10] among eurozone citizens about their right to pay with euro cash at physical points-of-sale (these should include vending machines and self-service checkouts[11]) and providing citizens with and informing them about channels where they

[7] https://www.banque-france.fr/communique-de-presse/le-comite-national-des-moyens-de-paiement-rappelle-son-attachement-la-liberte-de-choix-des

[8] https://www.ecb.europa.eu/pub/pubbydate/2022/html/ecb.use_of_cash_companies_euro_area.06102022~2c3e7fba18.en.html

[9] https://www.dnb.nl/en/general-news/dnbulletin-2023/some-retail-sectors-refuse-cash-payments-too-often/

[10] "Member States shall ensure that adequate measures are in place to raise awareness among the public about the availability and features of the digital euro and possibilities of access to the digital euro."

[11] Several large retailers and supermarkets do not accept euro cash at self-service checkouts point-of-sale, restricting the consumers free payment choice. https://www.stuttgarter-nachrichten.de/inhalt.rewe-edeka-aldi-und-co-einkaufen-im-supermarkt-ohne-kasse.209a4056-1b1d-46da-89fe-fbd7113927e1.html

can register their complaints. Secondly, relevant Member State authorities should utilise mystery shopping as a monitoring and supervisory tool.[12]

The IMIA is concerned that the obligation for Member States to only intervene with remedial measures when a *level* of non-acceptance of payments in cash undermines the *principle* of mandatory acceptance implies that ex ante unilateral exclusions of payments in cash are not prohibited, as long as refusals of cash payments are not 'widespread and structural' (Recital 6).

Furthermore, it is unclear to the IMIA, whether Member States have the right to take remedial actions, such as penalties as per Article 12, if for instance the level of ex ante unilateral exclusion is below the level of the 'common indicators' set by the European Commission. As in, should in Member State X the level of ex ante unilateral exclusions be identified for example as at 5% (1 in 20), but the common indicator set by the European Commission be set at an eurozone average of for example 10% (1 in 10), would Member State X be prohibited from intervening with remedial measures until the level reaches the 10% threshold?

Moreover, the Proposal mentions 'indicators'. IMIA would welcome clarification on whether the European Commission and the Proposal intends to monitor, develop and permit varied levels of ex ante unilateral exclusion by sector, as Recital (6) seems to suggest.[13] In that case, the IMIA would be, firstly, concerned that citizens would not be effectively granted the freedom to choose to pay with public money, which is the principle underpinning the trust in central bank money and a common currency, and secondly, that such sectoral treatment would spur undemocratic and social exclusion, as well as undermine the right to privacy. IMIA's view is that it is not respectful to citizens' freedoms and autonomy for the state to prescribe to individuals which goods and services they should deem important and therefore in which context they should prefer paying with a physical, tangible, private, data-secure and autonomous payment method – and when not.

The IMIA is particularly concerned that the proposed annual frequency of reporting on the level of ex ante unilateral exclusions, consolidations and analysis of results might be too slow to prevent, halt, and – in some jurisdictions – reverse the dismantling of euro cash infrastructure, undermining its future-proof resilience. The sustainability and resilience of cash infrastructure is dependent on citizens' ability and

[12] https://www.eba.europa.eu/ebas-recent-mystery-shopping-exercise-shows-value-tool-adds-supervisory-tasks-national-authorities

[13] "Member State should take effective and proportionate measures to remedy the situation, such as a prohibition or restrictions on ex ante unilateral exclusions of cash in all or parts of its territory, for example in rural areas, or in certain sectors which are deemed essential such as post offices, supermarkets, pharmacies or healthcare, or for certain types of payments which are deemed essential."

choice to pay cash not being limited by ex ante unilateral exclusions as well as having easy and convenient ability to withdraw and deposit cash, both in terms of fees and distances. Even apparently marginal obstacles to acceptance and access to cash nudge citizens away from public money and set off a downward spiral for cash infrastructure and trust in public money.

In this context, the IMIA would like to point to the legal tender status implications for the digital euro, where, apart for microenterprises and private citizens, unilateral exclusions of payments in the digital euro are **outright prohibited** across the eurozone "to ensure the effective protection of the legal tender status of the digital euro as a single currency throughout the euro area, and the acceptance of payments in digital euro, rules on sanctions for infringements should be introduced and applied in the Member States [Recital (11)]".

The ability of relevant national authorities to impose penalties is crucial to ensure compliance with mandatory cash acceptance legislation. In the Czech Republic, where mandatory cash acceptance is enshrined in law, the Czech central bank (CNB) asked the parliament last year[14] to grant it powers to impose sanctions in cases of non-compliance. The central bank explained that the current supervisory practice is such that if the CNB learns in the course of supervision (this may be during its own supervisory activities or on the basis of initiatives from other authorities or complaints from the public) that there has been an unauthorized refusal of domestic cash by an entity, it will examine the complaint and if it is justified, the subject is notified in writing of this fact and called upon to end the illegal conduct. The CNB stressed: "there is nothing more we can do, because the legislator did not set any penalty for this violation of the law." The IMIA would therefore welcome a clarification on how penalties for violation of legal tender status of euro cash can be set by Member States in practice, given that a certain level of cash payments refusal is not a violation of the proposed law per se. The IMIA would like to note that the level of penalties needs to also be set at a sufficiently high level to be effective in enforcing mandatory acceptance.

5. ACCESS TO CASH

(Article 8 – Access to cash + Article 9 – Procedural aspects)

The IMIA very much welcomes that the European Commission recognises the importance of access to cash for eurozone citizens. The IMIA would like to stress that though the proposal calls for 'sufficient' and 'effective' access, for euro cash to be a resilient and reliable payment choice, access to cash also needs to

[14] https://www.cnb.cz/cs/verejnost/servis-pro-media/vystoupeni-konference-seminare/prezentace-a-vystoupeni/Povinna-akceptace-tuzemske-hotovosti/

be convenient. This means – as in the digital euro proposal – 'universal, affordable and easy'. Hence, the success of the implementation of the proposal will depend on the details of the criteria in the 'common indicators' set by the European Commission. For example, a 3km distance to a cash access point might be an 11min driving distance, which could be seen as convenient, but only if the assumption is made that every citizen owns or has immediate access to and can drive a car. Otherwise, 3km distance in urban areas constitutes approximately 20min by public transport or at least 30min walking distance, this can hardly be seen as easy and convenient. Furthermore, the IMIA would like to stress that any set 'common indicators' for access to cash must clearly set as the minimum standard and Member States have the right based on national rules to protect its level of cash access and infrastructure or impose higher standards than that of the 'common indicators'.

The measurement of the access to cash situation for consumers can very within institutions from the same jurisdictions. The German Bundesbank found that "in the December 2022 issue of the Monthly Report, the Bundesbank's experts demonstrated that the overwhelming majority of citizens consider the effort involved in getting to an ATM or to bank counter to be low or very low." However, the Federation of German Consumer Organisations (Verbraucherzentrale Bundesverband – vzbv) reported that an increasing number of its survey respondents reported "having had problems getting cash (24 percent [2019], 29 percent [2021]). The most common difficulties with cash withdrawals in 2021 were: the lack of an ATM nearby (32 percent of those who had frequent or occasional difficulties), technical problems (25 percent), no banks or savings banks nearby (16 percent)."

The IMIA would like to stress, that the financial system and credit institutions themselves benefit from central bank public money as it underpins trust and confidence in private money, anchors and supports the smooth functioning of the payment system, and so underpins the trust in the wider financial system. This is of importance when conducting analysis of costs and benefits and funding arrangements analysis of cash infrastructure. Given that the state grants banks the privilege of a private money creation monopoly, the IMIA argues that this forms a social contract between the state, taxpayers and banking institutions and it is therefore **justifiable for taxpayers to ask credit institutions to provide easy, convenient and reliable cash services**. It is important to highlight in this context that every legal resident in an EU country is entitled to open a "basic payment account" and guaranteed features of this basic bank account include making unlimited cash deposits and withdrawing cash.

As with the annual monitoring and reporting of the level of ex ante unilateral exclusions of cash payments, the IMIA is also concerned whether this monitoring and reporting frequency might be too slow to halt a potential deterioration of cash infrastructure. The Bundesbank recently highlighted the central importance of bank-based infrastructure for the supply of cash in Germany and noted that "despite the current good supply situation in Germany, an erosion of the cash infrastructure represented by the closure of an increasing number of withdrawal facilities would likely significantly increase the time and effort involved in obtaining cash."

IMIA would also like to stress the access to and deposit of cash for merchants needs special attention. Many merchants are facing adverse and deteriorating conditions to keep being able to accept cash payments. In particular, due to bank branch closures and in some jurisdictions limits being placed on the value of deposits, merchants are facing high cash handling costs as they need to travel large distances to a safe cash deposit facility. Also, fees for cash deposits are general levied to business customers, being partly substantial, especially also for coin deposits. Free standing ATMs are judged by merchants as not equivalent to secure bank branches counters. Furthermore, without nearby bank branches, merchants are facing greater difficulty to have sufficient change money available to accept cash payments – as ATMs do not dispense coins nor 5euro, and very often not even 10euro, banknotes.