Legal tender of euro banknotes and coins

2023/0208(COD) - 28/06/2023 - Legislative proposal

PURPOSE: to establish detailed rules on the scope and effects of legal tender and access to euro banknotes and coins.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: the arrival of the euro as the single European currency was a major step forward in European integration. Euro cash is a dominant means of payment, as citizens and retailers use euro cash in daily transactions to make payments or give change in the euro area. Cash is the only means of payment that allows direct in-person payments, with immediate settlement and without involvement of any third party or use of electronic equipment.

The growth of electronic payments, a trend accelerated by COVID-19, has led to a general decline in cash payments and the reduction of automated teller machine (ATM) networks in a number of Member States means there are risks to accessing cash. Thus, the issue of the scope and meaning of the legal tender status of cash has become more prominent in the EU policy agenda, as outlined in the Commission's Retail Payments Strategy and in view of the recent ruling of the Court of Justice of the European Union on the matter.

CONTENT: euro cash is legal tender in the euro area. The proposal clarifies what is meant by legal tender and sets out the rules for the mandatory acceptance of cash and any limited exceptions to this. In addition, it also defines what Member States must do to ensure that cash is widely accepted and **easily accessible**.

The proposal aims to safeguard the continued and widespread acceptance of cash throughout the euro area and also to ensure that citizens have sufficient access to cash to be able to pay in cash if they so wish.

Definition of legal tender and exceptions

The proposal establishes, for the **first time in secondary legislation**, a definition and regulation of legal tender for cash. It **codifies and clarifies the judgment of the Court of Justice** of the European Union of January 2021, which sets out the principles of legal tender. In line with that case law, the proposal defines the legal tender of cash as entailing mandatory acceptance, at full face value, with the power to discharge from a payment obligation. A payee shall not refuse euro cash tendered in payment unless the parties have agreed on a different means of payment or an exception applies.

Conditions are laid down under which a refusal to accept euro cash would be legally possible; such a refusal must be made in good faith, be based on legitimate grounds, and in line with the principle of proportionality in view of the concrete circumstances in which a payment is to be made. The burden of proof that these conditions are met for such good faith circumstantial exceptions is on the payee. The proposal sets out two legitimate grounds on which euro cash may be refused on that basis in a non-exhaustive list, namely the tendering of banknotes the value of which is manifestly disproportionate to the value of the amount to be settled, and in exceptional cases where, at the relevant time, the enterprise has no change available or if the enterprise would not have enough change available as a result of that payment to carry out its normal transactions.

Acceptance of payments in cash

The proposal aims to ensure that the fundamental legal tender principle of mandatory acceptance is not undermined by widespread cash non-acceptance levels through the unilateral and ex ante exclusion of cash by enterprises. Member States would be obliged to monitor the level of ex ante unilateral exclusions of payments in cash and to ensure the acceptance of cash fulfilling the principle of mandatory acceptance of cash. Member States would report annually their assessment to the Commission and the European Central Bank. If cash non-acceptance levels are deemed to undermine the mandatory acceptance of euro banknotes and coins, Member States would need to take remedial measures.

Access to cash

The proposal establishes the obligation on Member States to ensure sufficient and effective access to cash throughout their territory, in all their regions, including urban and non-urban areas. This is required to safeguard the effectiveness of the legal tender of euro cash in practice. Member States would have the obligation to monitor the access to cash. They would also need to assess annually the situation in their territory and report their assessment to the Commission and the European Central Bank. If sufficient and effective access to cash is not ensured, Member States would need to take remedial measures.

Procedural aspects

Procedural aspects are set out to effectively implement the obligations concerning the acceptance of payments in cash and access to cash. In this regard, all Member States are required to designate one or more national competent authorities, which would have the necessary administrative and regulatory powers as regards acceptance of payments in cash and access to cash.

The designated national competent authorities would be entitled to assess if the principle of mandatory acceptance of cash is not undermined by widespread cash non-acceptance levels through the unilateral and ex ante exclusion of cash by enterprises, and if the access to cash is sufficient and effective in the Member States' territories.

Interaction between euro banknotes and coins and the digital euro

The proposal requires the convertibility of cash and the digital euro into each other at par, and for the avoidance of doubt gives the payer the right to choose to pay in cash or digital euro where mandatory acceptance of both applies in accordance with this Regulation, including notably those provisions affecting mandatory acceptance, as well as with the digital euro Regulation.