INTERNATIONAL MINT INDUSTRY ASSOCIATION

For inclusive, democratic, resilient and sustainable cash and coin access and acceptance.

IMIA BRIEF 2023/01

THE CASE FOR CASH – FREEDOM OF CHOICE

Cash (banknotes and coins) is the only form of public money intuitively known, understood, utilised and, crucially, trusted by citizens. It provides the society with personal as well as public data safety and privacy, universal inclusiveness, and personal as well as national crisis-resilience.

Promoting and maintaining cash payments as reliable and viable and free consumer choice option and therefore advocating safeguarding and investing in cash infrastructure (for wide access and acceptability) as a public good, is pertinent for the following reasons:

National critical infrastructure resilience

Cash is the only fall-back option now and in the foreseeable future in the event of an outage in the digital or card infrastructure, due to electricity failures or malfunctions in payment equipment of third-party providers. Recognising that we live in a world of increasing cyber warfare and climate-change disasters affecting energy infrastructure, reinforcing and securing operational resilience of retail payments networks for national emergency preparedness is paramount. Cash enjoys superior crisis resilience as a tested and trusted payment instrument with off-line capability, crucially as consumers are already in the habit of storing cash on an on-going basis and therefore providing the much-needed pre-stored liquidity to keep payments going 'around' in an off-line crisis event.

Privacy

The unique characteristics of cash payments is that they guarantee privacy and personal integrity. Cash gives control to individuals over their personal payments data. Cash transactions don't collect any personal purchasing habits data, which could be used for marketing or surveillance, and are immune to digital fraud. All forms of digital transactions pose inherent risks to privacy, including cybersecurity and hacking/data theft risks, from cryptoassets, digital euro to bank transfers and card payments. Being able to pay by cash empowers each individual with the autonomy and agency to decide to what extent they want to expose themselves to cyber security risks, scams and fraud.

Cultural and social cohesion

Vast majority of citizens worries about a future without cash, this is to great extent due to cash being a valued common point of reference uniting country's citizens, or a monetary zone such as the eurozone. Cash is recognised and appreciated as a national, cultural and historical identity symbol. It is seen as symbol of the state and good for the public.

Financial inclusion

Cash is the superiorly indiscriminatory financial and socially inclusive payment instrument. It is accessible to unbanked and underbanked, by choice or by circumstance. Cash allows the conduct of payment transactions without citizens having to pay transaction fees or to pay with their personal data for sale and analysis. It allows every citizen to engage in economic activity as well as interact socially with their families, community and culturally with autonomy and agency.

INTERNATIONAL MINT INDUSTRY ASSOCIATION (IMIA)
11 Quai de Conti 75006 Paris - France
Martina Horakova, Managing Director, martina.horakova@mintassociation.org

Autonomy in financial security

As recent cost of living crisis demonstrates, consumers choose to use cash payments as a fast and reliable budgeting method. It is the trusted store of value and tangibility qualities of cash that gives citizens full control and oversight of their budget and spending. Cash supports financially prudent habits and protects consumers from electronic payment methods and banking fees and costs, overborrowing and indebtedness.

Store of value

Cash is the only form of money, which can be stored by citizens independently and autonomously, in regard to the volume stored as well as free from any reliance on third-party providers, contracts and or gadgets. Hoarding is prudent and rational store of value saving activity providing citizens with autonomy and agency in any day-to-day situation. That is also why government emergency agencies regularly remind citizens to always keep substantial amount of cash store at hand for crisis situations and electricity infrastructure or other technology related outages.

Currency (value anchor), trust and financial stability

Citizens' confidence that bank deposits can always be converted (accessed and accepted) into cash, central bank public money, enables the smooth coexistence, convertibility and complementarity of the various forms of deposits and payment methods. It is this unlimited convertibility of bank deposits, with credit and default risk, into physical, tangible, always off-line functional public money payment instrument and store of value that maintains a well-functioning payment system, financial stability and is a pre-condition for preserving the transmission of monetary policy, and hence for protecting the value of money. It is cash, as physical central bank public money, that reduces costs of prudential supervisory of policymaking, gives confidence to the national currency and therefore anchors its value.

INTERNATIONAL MINT INDUSTRY ASSOCIATION (IMIA)
11 Quai de Conti 75006 Paris - France
Martina Horakova, Managing Director, martina.horakova@mintassociation.org

INTERNATIONAL MINT INDUSTRY ASSOCIATION
For inclusive, democratic, resilient and sustainable cash and coin access and acceptance.

IMIA POSITION PAPER 2023/01

CLARIFYING THE LEGAL TENDER STATUS OF EURO BANKNOTES AND COINS

MANDATORY ACCEPTANCE CERTAINTY AT POINT-OF-SALE

This IMIA position paper addresses the European Commission's initiative "Clarifying the legal tender status of euro banknotes and coins"[1] as well as answers questions posed in 'Section 3 - Making the digital euro available for retail use while continuing to safeguard the legal tender status of euro cash' of the European Commission's "Targeted consultation on a digital euro".[2]

IMIA is of the opinion that it is needed to guarantee absolute obligation to accept cash payments at the point-of-sale, business-to-consumer or government service-to-consumer transactions, uniformly across the eurozone, securing euro cash as a free payment choice to citizens. Therefore, legislative action at EU level is needed to enhance legal certainty and enshrine the legal tender status of euro cash in secondary law.

Introduction

The IMIA welcomes the European Commission's initiative to protect the role of euro cash (banknotes and coins) by clarifying its status as legal tender. Currently, there are no provisions in primary and secondary EU-law providing for a definition of the term 'legal tender' in general. In our view, this lack of legal clarity and certainty was not resolved by the "2010 Commission Recommendation on the scope and effects of legal tender of euro banknotes and coins" nor by the "2021 judgment of the Court of Justice of the EU".

The IMIA is of the opinion that a legislative action at EU level is needed to establish legal certainty by defining the power and scope of the term legal tender and enshrining the legal tender status of euro cash in secondary law. Specifically, to provide clarity on the power and scope of the status of legal tender of euro cash in regard to its mandatory acceptance, creating general public confidence that people will be able to use and choose euro cash – central bank public money and the common currency – in a reliable and uniform way across the eurozone.

The IMIA further endorses that legal tender status of euro cash should be consistent with the related initiative on the digital euro.[3] 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 needs to be guaranteed. Therefore, in order for the digital euro not to replace cash, and for EU governmental bodies not to be seen as unequally pushing citizens to adopt digital euro as displacement of euro cash, both types of central bank public money need to be equally supported and provided with a level playing field in terms of regulatory measures.

1. *https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13429-Clarifying-the-legal-tender-status-of-euro-banknotes-and-coins_en*
2. European Commission (2022), "Targeted consultation on a digital euro" *https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/ documents/2022-digital-euro-consultation-document_en.pdf*
3. "Appropriate regulatory measures, including granting the digital euro legal tender status, should be considered in order to ensure consistency with cash and to make digital central bank money widely accessible for retail use to all end-users in the euro area, whilst taking into account the distribution of the costs and required technologies." Eurogroup (Jan 2023), "Eurogroup statement on the digital euro project" *https://www.consilium.europa.eu/en/press/press-releases/2023/01/16/eurogroup-statement-on-the-digital-euro-project-16-january-2023/*

INTERNATIONAL MINT INDUSTRY ASSOCIATION (IMIA)
11 Quai de Conti 75006 Paris - France
Martina Horakova, Managing Director, martina.horakova@mintassociation.org

According to the latest SPACE report, euro cash payments remain popular and cash remains the most frequently used means of payment in store.[4] Cash was the most frequently used payment method at the point of sale (POS) in the euro area and was used in 59% of transactions, down from 79% in 2016 and 72% in 2019. Cash is losing market share due to emergence of new competing payment instruments. However, given fierce competition, no marketing, and ongoing 'fake news' about the risk of Covid-19 contagion, euro cash is remarkably resilient as a popular payment method.[5]

In contrast, retail central bank digital currency is, in jurisdictions where launched, so far experiencing significant difficulties with consumer adoption. Therefore, cash as the type of central bank public money already utilised and trusted by the public needs to be granted equal, if not superior, legal tender status to a potential digital euro.

Policymakers need to ensure that consumers and citizens always have the democratic freedom and crucially individual decision-making autonomy to make their own payment method choices between the two types of central bank public money – digital and physical. This means equal treatment in terms of legal underpinning for wide access and acceptability of both euro cash and digital euro. Failure to do so could be seen by citizens and taxpayers as both imprudent and undemocratic.

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 inclusiveness, crisis-resilience, unlimited store of value function, and tangibility and physicality giving citizens self-reliant autonomy.[6]

Euro cash is central bank public money that is already known, trusted and adopted by citizens with infrastructure in place. While preparing and dedicating new resources and new investments for developing and then maintaining digital euro infrastructure, it is equally of importance to do so for euro cash infrastructure. To take measures to preserve sustainable and future resilient level of cash infrastructure, as well as invest in re-development where cash services have already, or are at risk of, deteriorating beyond secure and sustainable levels, and so rectify absence of oversight.[7]

Brief history and analysis of the term legal tender (status) in primary and secondary law

Treaty on the Functioning of the European Union (TFEU):

The term legal tender, as referred by the Treaty on the Functioning of the European Union (TFEU), only states that the euro banknotes are the only accepted currency within the Eurozone, without any implication on cash acceptance. It merely states that former eurozone national currencies or any non-euro national currencies are not a legal tender. At the time of the formation of the TFEU it was not discussed, nor any attempt made to arrive at a distinct and common understanding of the implication of the term legal tender for the European Single Currency. National laws referring to 'legal tender' would remain vastly unaffected by the introduction of the euro and would be applied to the euro in the same manner as to the former national currency. However, legal tender concepts were in

4. European Central Bank (Dec 2022), "Study on the payment attitudes of consumers in the euro area (SPACE)" *https://www.ecb.europa.eu/stats/ecb_surveys/space/html/ecb.spacereport202212~783ffdf46e.en.html*

5. Belgium experienced in 2022 small denomination coin shortages as a very low number of euro coins were being returned to National Bank of Belgium, while Belgium did not maintain sufficient stock of coins adequate for cash payments demand of its population. Reason stated that "the decrease in the cash demand foreseen by the Belgian authorities not materialising.»
European Central Bank (Nov 2022), "Decision (EU) 2022/2285 of the European Central Bank of 8 November 2022 amending Decision (EU) 2021/2255 on the approval of the volume of coin issuance in 2022 (ECB/2021/54) (ECB/2022/41)"
https://www.ecb.europa.eu/press/govcdec/otherdec/2022/html/ecb.gc221202~2708f7d351.en.html

6. Digital euro can only achieve, depending on design, cash-likeness, but not cash equivalence.

7. This situation is not unique to the eurozone and prominently in Sweden, where cash infrastructure was left unattended and unprotected in time, legal tender initiative is taking place: "The Riksbank considers that the position of cash as legal tender needs to be strengthened. Those who need to use cash to manage their finances should be able to continue doing so. Cash also plays an important role in times of crisis and elevated preparedness. But ensuring the possibility of using cash, requires quick political decisions."
Riksbank (Nov 2021), "Payments Report 2021"
https://www.riksbank.se/en-gb/payments--cash/payments-in-sweden/payments-report2021/3.-the-riksbanks-work-and-policy/the-position-of-cash-as-legal-tender-needs-strengthening/

many cases not laid down in Member States' statutory law but derived from a mixture of historical pre-understandings, scarce jurisprudence and doctrine.[8]

Regulation (EC) 974/98[9] (2nd Euro-Regulation):

This regulation ascribed also euro coins the status of legal tender. Apart from that the aim of this regulation was the management of the transition period of national currencies to euro changeover from 1 January 1999 to 31 December 2001. Its Recital 19 states that "limitations on payments in notes and coins, established by Member States for public reasons" are not considered to be "incompatible with the status of legal tender of euro banknotes and coins, provided that other lawful means for the settlement of monetary debts are available". Restrictions on the use and acceptance of euro cash are often justified with reference to this recital. However, its legal guidance and certainty is very limited, given that it was intended to clarify how to cope strictly with the transitional period before the introduction of the euro cash. Thus the content of the recital, which per se has no normative power, and does not even feature in the core text of the regulation itself.[10]

European Commission Recommendation 2010/191/EU of 22 March 2010 (Recommendation):

The Recommendation, soft-law, issued in 2010, had the aim to clarify the legal tender status situation. Specifically, it hoped to provide one single regime for the single currency and for citizens who want to pay with euro cash that they can do so uniformly across the euro area. It also sought to define the powers of the legal tender status "from the point of view of consumer protection". The Recommendation established that the concept of legal tender in EU law, as regards banknotes and coins, implies a general obligation in principle of acceptance of euro cash by the creditor for the settlement of the monetary debt. However, it also stressed that such an obligation is not absolute and could be waived in accordance with the contractual freedom of the parties. This caveat leaves legal tender status yet again unclarified at the EU level and leaves it to individual member states and their treatment of private law to decide on the implications of the status.

The Recommendation mentions that the European Commission will review the implementation of this recommendation three years after its adoption and assess whether regulatory measures, hard-law, are needed. This review is taking place now, 13 years later, in the context of introduction of potential digital euro as well as growing instances of refusal of citizens' cash payments, in many Member States uncontested by both private and public sector service providers.

Euro Legal Tender Expert Group (ELTEG):

The content of the Recommendation was to great extend based on findings of the Euro Legal Tender Expert Group (ELTEG) report.[11] Established by the European Commission this working group consisted of representatives from national central banks and ministries of finance of the euro area. ELTEG was not a formal decision-making or policy-making body and its reports, though there are votes on the main take aways, are largely a compilation of comparative and 'fact finding' research.

---

8. Freitag, Robert, 'Euro As Legal Tender (and Banknotes)', in Fabian Amtenbrink, Christoph Herrmann, and René Repasi (eds), The EU Law of Economic and Monetary Union (New York, 2020; online edn, Oxford Academic) *https://doi.org/10.1093/oso/9780198793748.003.0026, accessed 31 Jan 2023.*

9. Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31998R0974*

10. "Strictly speaking, recital is not part of the norm. It may give some insight into the motives of the lawmaker and may serve as argument in interpretation, but it is in no way binding. "However, interpretation is only possible if a norm or a clause is open for interpretation and is in need of it; mainly because it is vague, opaque or inconsistent." In regard to legal tender, such a norm or clause is, however, not in sight. Moreover, the theme of recital 19 is nowhere to be found in the normative part of the regulation to be expounded. For these reasons, arguments from the recital have to be dismissed. They lack any normative significance for the legal question to be answered here." Helmut Siekmann (2018), "Legal tender in the euro area", No 122, IMFS Working Paper Series from Goethe University Frankfurt, Institute for Monetary and Financial Stability (IMFS) *https://www.econstor.eu/bitstream/10419/178212/1/1019897406.pdf*

11. Report of the Euro Legal Tender Expert Group (ELTEG) on the definition, scope and effects of legal tender of euro banknotes and coins (2010) *https://ec.europa.eu/economy_finance/articles/euro/documents/elteg_en.pdf*

The main work of ELTEG was to review, map and compile those above-mentioned unified national laws and practices regarding the treatment and implication of legal tender. The report of ELTEG highlighted non-unanimity on the legal effects of legal tender status across Members States, which remained unchanged with the publication of the Final ELTEG report in July 2022.[12]

European Court of Justice (ECJ):

In January 2021 the ECJ ruled[13] that, as per the Recommendation 2010, general mandatory acceptance could be waived through free agreement of parties. The Court then also crucially, based on Recital 19, determined that member states may adopt measures that impose limitations (and equally mandatory acceptance) on payments in euro cash. Such limitations cannot lead in law, or in fact, to the complete abolition of euro banknotes. Moreover, they must be established for public reasons. IMIA wants to highlight that due to the network effects of cash infrastructure functioning, individual and accumulative effects of cash acceptance and cash acceptance barriers, do have the, though not always intended, de facto effect of elimination of euro cash infrastructure and thereby also its acceptance and access to.[14]

The ECJ had no other option but to base its judgment on the existing legislative acts, in their binding power and legal certainty – unsatisfactory regulations and recommendations in regard to the scope and power and legal tender. The IMIA is therefore of the opinion that neither the ECJ nor national courts are well placed to rule and determine the scope and implications of legal tender unless and until law makers take action. Specifically the European Union must make use of its exclusive competence for monetary policy and provide a hard-rule regulation defining the concept and term of euro cash legal tender, and its implications on the obligation of point-of-sale service and goods providers (both private and public) to accept euro cash. The IMIA is well aware that today there is still a diversity of approaches and positions across Member States on the issue of mandatory acceptance. However, in our view, the singleness of the common currency should take superiority.

IMIA therefore strongly welcomes the European Commission's effort, in the pursuit of the public interest of the Union, in its exclusive competence for common monetary policy and the euro as value anchor underpinning financial stability objective as well in its competence in establishing of competition rules necessary for the functioning of the internal market[15], to arrive at a distinct and common understanding of the implication of the term legal tender for the European Single Currency.

Superior public interest, security and resilience aspects of physical central bank public money

Therefore, cash as the type of central bank public money already utilised and trusted by the public needs to be granted equal, if not superiorly strong, legal tender status to a potential digital euro.

Privacy

All forms of digital transactions pose inherent risks to privacy, including cybersecurity and hacking/data theft risks, from cryptoassets, digital euro to bank transfers and card payments. It should be up to each individual's judgment, autonomy and risk-management appetite, whether they want to share their personal payments data with the wide cyber(-threat) space or not. 'Respect for private and family life' (Article 7) and 'Protection of personal data - data should be processed fairly and for

12. Final report of the Euro Legal Tender Expert Group (ELTEG) of 6 July 2022
https://ec.europa.eu/transparency/expert-groups-register/core/api/front/document/85940/download

13. Judgment of the Court (Grand Chamber) of 26 January 2021, Johannes Dietrich and Norbert Häring v Hessischer Rundfunk
https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62019CJ0422&from=en

14. Bundesbank (Dec 2022), "Access to cash in Germany - results of a representative public survey", Monthly Report
https://www.bundesbank.de/resource/blob/902838/f2a71aeba7916212a84fdbb09571529c/mL/2022-12-bargeld-bevoelkerungsbefragung-data.pdf

15. Euro cash being already a powerful payment instrument to compete with the international payment methods that dominate electronic payments

specified purposes and on the basis of consent or some other lawful basis' (Article 8) are enshrined as policy objectives in the European Charter of Fundamental rights. Based on already implemented digital central bank currency pilots and launches as well as specifically based on the consideration of digital euro, digital central bank public money cannot achieve the personal data safety and privacy that the states should provide and guarantee to their citizens with euro cash. As the European Data Protection Board highlights: "As compared to the physical cash and its beneficial properties for privacy and liberties, it is certain that the distinctive value proposal for a digital euro in an already highly competitive and efficient payment landscape would be its high level of privacy, which is the task of the public sector to provide. [...] For this reason, a digital euro should be designed as close as possible to physical cash."[16]

National critical infrastructure resilience

Cash is the only fall-back option now and in the foreseeable future in the event of an outage in the digital or card infrastructure, due to electricity or IT infrastructure failures or malfunctions in payment equipment of third-party providers. Recognising that we live in a world of increasing cyber warfare and climate-change disasters affecting energy and communication infrastructures, reinforcing and securing operational resilience of retail payments networks for national emergency preparedness is paramount. We do agree that a central bank public digital payment network could serve as a risk diversification add-on option to reliance on private payment networks, which in many cases are monopolies or oligopolies, and exposure to their possible disruptions. However, cash enjoys superior crisis resilience[17] and established trust, unlikely to be fully matched with unfamiliar, non-tangible and very limited potentially off-line capability, payment instrument.

Autonomy in financial security

Citizens can use cash without electricity and equipment in any life situation, unrestricted by store of value holding limits and reliance on third parties. Being able to convert private money deposits into physical and tangible central bank public money, which is free of credit and default risk and generally accepted, is of crucial importance for stability of people in times of crisis, be it political, financial or natural disaster crisis, or personal crisis. It is also this aspect that gives physical central bank public money its value anchor role, on which all digital forms of payments build and derive trust from. Furthermore, it should be up to each individual's economic freedom if they want to be financially prudent and responsible, use cash for their budgeting purposes, have control of private money fee expenses, not overborrow and indebt and be less dependent on gadgets and energy. Given that the Global Financial Crisis was not unrelated to consumer credit overborrowing, citizens prudent behaviour should not be discouraged by policymakers from not only financial education, but crucially financial stability perspective.

Financial and social inclusion and cost

"Cash is an important part of [people's] freedom to choose how to pay and essential for the financial inclusion of all groups in society."[18] Euro cash is the superiorly non-discriminatory financial and socially inclusive payment instrument. It is accessible to unbanked and underbanked, by choice or by circumstance. It allows every citizen to engage in economic activity as well as interact socially with their families, community and culturally with autonomy and agency. Euro cash allows the conduct of payment transactions free of charge, without citizens having to pay transaction fees or to pay by leaving their personal data for sale and analysis. Furthermore, cash is recognised and appreciated by

---

16. The European Data Protection Board (Oct 2022), "Statement 04/2022 on the design choices for a digital euro from the privacy and data protection perspective"
https://edpb.europa.eu/system/files/2022-10/edpb_statement_20221010_digital_euro_en.pdf

17. Seitz, Franz and Rösl, Gerhard (2022), "On the Stabilizing Role of Cash for Societies",
https://mpra.ub.uni-muenchen.de/113784/1/MPRA_paper_113784.pdf

18. The Eurosystem cash strategy, accessed 31 Jan 2023.
https://www.ecb.europa.eu/euro/cash_strategy/html/index.en.html

people as a national, cultural, and historical identity symbol. It is seen as symbol of the state and as a sovereign good issued to the public.

Store of value

Cash is the only form of money, which can be stored by citizens independently and autonomously, in regard to the volume stored as well as free from any reliance on third-party providers, contracts and or gadgets. Hoarding is prudent and rational store of value saving activity providing citizens with autonomy and agency in any day-to-day situation. Furthermore, several central banks and government emergency agencies are stepping up their advocacy work to remind citizens to always keep substantial amount of cash store at hand for crisis situations and electricity infrastructure or other technology related outages.[19] On the other hand it is highly unlikely that the digital euro payment instrument is likely to come any close to the store of value attribute of euro cash: "The intention is to incorporate limit and remuneration-based tools in the design of a digital euro to curb its use as a form of investment."[20]

Value anchor and financial stability

Euro cash is a payment instrument that citizens already know and, crucially, trust. The ECB as any central bank is in the trust creating and trust maximising business, this enables it to conduct monetary policy and be guarantor of financial stability. It is therefore crucial that the trust in and reliance on euro cash is not undermined. It is indeed the case that citizens' confidence that private commercial bank money can always be converted into central bank money that enables the smooth coexistence, convertibility and complementarity of the various forms private money takes. It is, however, the unlimited convertibility of private commercial bank money deposits into physical, tangible, always off-line functional central bank public money payment instrument and store of value that maintains a well-functioning payment system, financial stability and is a pre-condition for preserving the transmission of monetary policy, and hence for protecting the value of money.

Furthermore, the convertibility of private commercial bank money into physical central bank public money strongly underpins a sound, stable and profitable banking sector. In other words, it is precisely people's knowledge that they can reliably convert their private money holdings into physical central bank public money, free of credit and default risk, that funds and maintains private money deposits, as well as reduces prudential supervisory cost oversight. As this convertibility is dependent on availability of bank branches, ATMs, and CITs, and merchants that dispense and accept cash, the cost, development and maintenance of this infrastructure needs to be supported with regulatory measures. Should euro cash become hard to access, unreliable to use as a payment method, or too costly, so would its role as a value anchor at the heart of the financial system be diminished or lost completely.

In this context, it is IMIA's view that public and semi-public entities and services failing to accept euro cash limit not only the resilience of national public infrastructure, but it also significantly undermines the confidence in euro as a currency and therefore its value.

Legislative action proposal

In the view of IMIA the current situation where the legal definition of the legal tender status of cash is set out in the 2010 Recommendation and ECJ jurisprudence is not adequate. Clarification via a legislative act, hard law, at the EU level is needed to enhance legal certainty and enshrine the legal tender status of euro cash in secondary law.

"The Eurosystem's cash[21] strategy aims to ensure that banknotes remain widely available and

19. The Federal Office of Civil Protection and Disaster Assistance (BBK), "Guide for Emergency Preparedness and Correct Action in Emergency Situations", accessed 31 Jan 2023.
https://www.bbk.bund.de/SharedDocs/Downloads/EN/Mediathek/Publikationen/ratgeber-englisch-disasters-alarm.pdf?__blob=publicationFile&v=4

20. European Central Bank (Sept 2022), "Progress on the investigation phase of a digital euro"
https://www.ecb.europa.eu/paym/digital_euro/investigation/governance/shared/files/ecb.degov220929.en.pdf

21. Banknotes and coins

widely accepted as a competitive, reliable payment instrument and store of value that can be owned and used directly by all consumers". In order to achieve this the IMIA deems it necessary that mandatory acceptance of payments in euro banknotes and coins at the point-of-sale in retail and public services transactions is uniformly guaranteed across the eurozone.

We propose that this is achieved by reconsidering the implications and reality of contractual freedom of two parties to agree on another payment method, when private or public institutions outright refuse to accept euro cash. The consumer and citizen, the weaker party, is outright denied making a free choice and to negotiate any agreement. In that sense the contractual freedom of the weaker party is violated. Therefore, in business-to-consumer or government service-to-consumer transactions the legal tender status of euro cash should have an absolute obligation to accept implication and power.

Policymakers in some jurisdictions realise that cash services and acceptance of cash needs to be guaranteed for national security and resilience reasons. In this context, it is being proposed or measures are already in place, to ensure that this is guaranteed for key services or services of importance, such as pharmacies and petrol stations. IMIA's view is that it is more respectful to leave this decision to citizens, rather than the state prescribing to individuals what should they deem important and in what context they should prefer paying with a physical, tangible, privacy data secure and autonomous payment method and when not.

Exceptions to the principle of guaranteed mandatory acceptance should only be grounded on and defined for reasons related to the 'good faith principle'. Specifically: 50 coins in any single payment (except for the issuing authority and for those persons specifically designated by the national legislation of the issuing Member State); if the value of the banknote tendered is disproportionate compared to the value of the amount to be settled (a very large denomination banknote tendered for a micro payment); and 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).

The following exceptions do not constitute in our view the 'good faith principle'. Firstly, if refusal is for security reasons. As a Bank of Finland paper points out: "The security risks at retail stores must be taken seriously. There are no statistics available on the number of or developments in cash robberies at the checkout counter, nor on the share of cash robberies relative to other thefts. The share of cash robberies in the total amount is presumably fairly small, but it has a larger impact on the sense of security and willingness to receive cash payments."[22] Furthermore, individual security risks and risk management cost of citizens and consumers should equally be taken into consideration, versus those of establishments, bearing in mind that online banking and cybercrime targeting customers has been on the rise.

In this context it is also worth highlighting the finding of the ECB's survey on the usage of cash among companies that: "when firms are deciding whether to accept a means of payment, security of payment (94%) and reliability of payment methods (92%) are the most important criteria. Companies generally consider cash to be better in terms of overall costs, transaction speed and reliability compared with other payment methods."[23]

Secondly, if a retailer has no change available and if there would not be enough change available as a result of that payment for a retailer to carry out its normal daily business transactions. IMIA is aware that these are challenging situations for retailers and institutions, and for that reason, IMIA strongly encourages the European Commission to investigate and potentially establish regulatory measures for euro cash acceptance. Making sure that retailers and authorities don't face high cash handling costs and have access to adequate cash lodgment facilities (infrastructure,

22. Bank of Finland (Mar 2022), "The status of cash in Finland"
https://www.suomenpankki.fi/globalassets/fi/media-ja-julkaisut/lausunnot/documents/kateisen-asema-suomessa_taustamuistio_en.pdf

23. European Central Bank (Oct 2022), "Use of cash by companies in the euro area"
https://www.ecb.europa.eu/pub/pubbydate/2022/html/ecb.use_of_cash_companies_euro_area.06102022~2c3e7fba18.en.html

modalities, access, high fees).[24]

It is important to recall in this context that the Eurosystem's cash strategy aims to ensure that banknotes (and relatedly coins) remain widely available and widely accepted as a competitive payment instrument. However, cost and competitiveness of cash payments and services are determined by private retail-cash providers (credit institutions), in terms of cash withdrawal and deposit fees and convenience of distance to withdrawal and deposit services cost and infrastructures. The ECB survey on usage of cash by companies found that "the most common method – withdrawal over-the-counter at the bank – is used by 64% of those respondents who withdraw cash [and] most companies (80%) that withdraw cash do so to ensure they have change available". Therefore, bank branch closures are posing a risk to cash access and thereby to cash acceptance among retailers.

Though euro cash access is not the subject of the legal tender regulation initiative per se, guaranteeing sufficient access to euro cash for both citizens and business is of crucial importance. For the above-mentioned reasons as well as for citizens and consumers to be able to access cash conveniently both in terms of no cost and without cumbersome distance in order to take advantage of mandatory acceptance of cash, IMIA strongly agrees with the European Commission that since the effectiveness of the legal tender status of cash presumes the widespread possibility of having access to it, there should be a provision which aims to guarantee the availability of cash, such as an obligation on Member States to adopt rules to ensure sufficient access to cash and report these rules to the European Commission and the ECB. It is important to highlight in this context that every legal resident in the EU country is entitled to open a «basic payment account» and guaranteed features of this basic bank account is making cash deposits and withdrawing cash, regardless of the number of operations.

In IMIA's view there should be a provision for administrative sanctions for cash non-acceptance, such as it is the case for example in France, where cash is protected in the French Criminal Code and refusing to accept banknotes and coins that have legal tender status in France is punishable by a fine. The IMIA also supports the notion that additional exceptions to the mandatory acceptance principle may be proposed by Member States subject to approval by the European Commission after consulting the ECB. However, if approved, any additional exceptions need to be made mandatory across the eurozone.

24. Final report of the Euro Legal Tender Expert Group (ELTEG) of 6 July 2022
https://ec.europa.eu/transparency/expert-groups-register/core/api/front/document/85940/download