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# Commission recommendation on the legal tender of the euro



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# The legal tender of the euro in the EU legislation : broad principles



- *Since the adoption of the euro, the legal tender status of euro banknotes and coins is a matter of EU law*
- *Yet the Treaty lays down very broad principles*
  - **Art. 128 attributes the legal tender status exclusively to euro banknotes issued by the ECB and the NCBs...**
  - **...but is silent on the practical consequences of this status**
  - **The legal tender of euro coins is not explicitly mentioned**
- *The 'euro Regulation' (May 1998):*
  - **Art. 10 : mentions the legal tender status of euro banknotes**
  - **Art. 11 : mentions the legal tender status of euro coins**
  - **...But does not give any detailed definition**

# The diversity of pre-euro legal traditions : a few examples



- *Refusal of certain denomination in shops*
  - **Refusing cash on a permanent basis is a criminal offense in some countries**
  - **It is perfectly accepted in others as long as the client is clearly informed in advance (through signs in shops, for example)**
  - **In one case, prior information of the client is not even necessary**
- ⇒ *Two main schools of thought in the euro area (legal tender vs contractual freedom prevalence)*
  
- *Mutilation/destruction of banknotes and coins by individuals*
  - **Prohibited/sanctioned in some MS**
  - **Perfectly licit in others**
- ⇒ *Two different underlying philosophies (banknotes and coins: public good vs private property)*



# The need for EU action

- *The diversity of situations across Member States is not a satisfactory situation for a single currency*
  - **It creates a situation of legal uncertainty: there should be one single regime for the single currency**
  - **It is a source of confusion for the citizen willing to pay with euro cash in the euro area (no certainty on his rights when travelling abroad)**
  - **It is an issue from the point of view of consumer protection**
- *The purpose of the Commission recommendation is to define common guiding principles on issues with concrete implications for the citizen in its daily life*
  - **Can a retailer refuse payments in cash at all times ?**
  - **Can shops refuse payments with high denomination banknotes ?**
  - **Can surcharges be imposed on payments in cash ?**

# Which instrument to choose for legal tender status? (I)

Right to set (mandatory?) rule

- 'hard law' (enforcement)/. 'soft law' (political message)
- What?

If 'hard law' ... legal tender to be governed by primary EU law (argumentum e contrario Article 128 (1)) or secondary EU law?

Legal basis for EU legislation:

- Article 128 TFEU: "Council to adopt measures to harmonise the denominations and technical specifications of euro circulation coins" - ?
- Article 133 TFEU: "EP and Council to lay down the measures necessary for the use of the euro as the single currency" - ?

# Which instrument to choose for legal tender status? (II)

## Article 288 of Treaty of the Functioning of the European Union

- Regulation (general application, binding in its entirety and directly applicable) - ?
- Directive (binding as to the result, Member States to choose form and method) -?
- Decision (binding in entirety, specifically addressed) - ?
- "**Recommendations** and opinions shall have no binding force"

... soft law!

Recommendation = soft law =  ? (although reference in Council conclusions)

Article 292: "The Council shall adopt recommendations"

# The recommendation endorses the main conclusions of a joint Commission/ECB expert group



- *A joint initiative : the euro legal tender expert group (ELTEG)*
- *Composition of ELTEG: Ministries of finance and NCBs of the euro area, group co-chaired by the Commission and the ECB (Mint Director Working Group invited as observer)*
- *The mandate :*
  - ***“Gather all the different national interpretations of the concept of legal tender”***
  - ***“analyze the issues and try to agree on a common definition and interpretation”***
- *A one year work (7 meetings in 2009)*
- *The main conclusions reached in the Group were endorsed by the recommendation adopted on 22 March 2010*

# The 10 principles



- *The recommendation gives guidance to the European citizen willing to pay with euro cash in the euro area*
- *Beyond the general acceptance of euro banknotes and coins, it addresses many aspects of the legal tender status (destruction, use for artistic purpose, stained banknotes, rounding schemes, collector coins...)*
- *The main message is that payments in cash should generally be accepted unless good faith reasons*



# 1. Definition of legal tender



***Where a payment obligation exists, the legal tender of euro banknotes and coins should imply:***

- (a) **Mandatory acceptance:** The creditor of a payment obligation cannot refuse euro banknotes and coins unless the parties have agreed on other means of payment.*
- (b) **Acceptance at full face value:** The monetary value of euro banknotes and coins is equal to the amount indicated on the banknotes and coins.*
- (c) **Power to discharge from payment obligations:** A debtor can discharge himself from a payment obligation by tendering euro banknotes and coins to the creditor.*

## 2. Acceptance of payments in euro banknotes and coins in retail transactions



*The acceptance of euro banknotes and coins as means of payments in retail transactions should be the rule.*

*A refusal thereof should be possible only if grounded on reasons related to the 'good faith principle' (for example the retailer has no change available).*

### 3. Acceptance of high denomination banknotes in retail transactions



*High denomination banknotes should be accepted as means of payment in retail transactions.*

*A refusal thereof should be possible only if grounded on reasons related to the 'good faith principle' (for example the face value of the banknote tendered is disproportionate compared to the amount owed to the creditor of the payment).*

## 4. Absence of surcharges imposed in the use of euro banknotes and coins



*No surcharges should be imposed on payments with euro banknotes and coins.*

## 5. Euro banknotes stained by Intelligent Banknote Neutralisation systems (IBNS)



*Even if euro banknotes stained with security ink by Intelligent Banknote Neutralisation Systems (IBNS) are legal tender, Member States should communicate actively towards stakeholders (banks, retailers, general public) that stained banknotes must be brought back to National Central Banks as it is very likely that they are the product of a theft.*

## 6. Total destruction of issued notes and coins by individuals



*Member States should neither prohibit nor penalise total destruction of small quantities of euro banknotes or coins by individuals.*

*They should however prohibit unauthorized destruction of large quantities of euro banknotes or coins.*

## 7. Mutilation of notes and coins for artistic purposes



*Member States should not encourage mutilation of euro banknotes or coins for artistic purposes but should tolerate it.*

*Such mutilated banknotes or coins should be considered as unfit for circulation.*

## 8. Competence to decide on the destruction of fit euro circulation coins



*The decision to destroy fit euro circulation coins should not belong to any national authority in isolation.*

*Prior to the destruction of fit euro circulation coins, the national competent authority should consult the Euro Coin Sub-Committee of the Economic and Financial Committee and inform the Mint Directors Working Group.*

*(see Proposal for regulation on euro coin issuance)*



## 9. Legal tender of 1 and 2 euro cent coins and rounding rules



*In Member States where rounding regimes have been adopted and prices consequently rounded to the nearest five cents, 1 and 2 euro cent coins should remain legal tender and should continue to be accepted as means of payments.*

*Member States should however refrain from adopting new rounding rules since they affect negatively the power to discharge from a payment obligation by tendering the exact amount owed and since it may lead in some circumstances to a surcharge on cash payments.*

# 10. Legal tender of euro collector coins



*Member States should take all measures deemed appropriate to prevent euro collector coins from being used as means of payments (for example special packaging, clear communication, use of precious metal, sale prices above face value).*

# Complaints to the Commission

Number – very few !

Countries of complaint – NL, FI

## Object

- Retailers refusing small (coins) or high (banknotes) denominations
- Retailers in shopping-malls promoting use of cards rather than cash



# The review clause



The Commission will review the implementation of this recommendation three years after its adoption and assess whether regulatory measures are needed.

*...but review clause for 'soft law' instrument?*

# Conclusion



- *Implementation will be closely monitored by the Commission*
- *Additional building-block in the building up of a SEPA/SECA for citizens*
- *Important step forward towards a single regime for the single currency*