The Cash Management Companies Association

ESTA's position on the final report of the ERPB Working group on "*access to and acceptance of cash*"

10 February 2022

ESTA welcomes the European Retail Payment Board Working Group report on access to and acceptance of cash ("The Report") which was released in December 2021. This is an important contribution which clarifies the situation of cash and explains its current evolution. It identifies major trends in cash supply and cash usage which should be the basis of any policy action by EU monetary authorities aiming at restoring the place of cash. It confirms the unavoidable consequences of cash being made available through its "worst enemy".

ESTA left the Working Group in April 2021 when it appeared that it was not in a position to put some key issues on the agenda of the WG. We subsequently produced a submission to the ERPB Working Group with a view "*to covering areas where it is unlikely that the ERPB Working Group, due to its composition and structure, will venture*".

ESTA is delighted to see that the Report now covers areas which were not initially expected, despite some omissions. Indeed, the Report does confirm some trends outlined by ESTA. In substance, the key learning of the Report is that banks consider that cash supply is no longer a fundamental issue, as most consumers have cards they can use when cash is not available – and that this might be good enough.

ESTA noted the recommendation "*that the outcome of the Report must be treated with caution*".[1] We do not fully agree with this advice, as there is indeed a very clearcut and valuable outcome in the Report that explains the dire situation of cash which motivated the mandate of the Working Group.

[1] Report, at page 5 and 51.

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Executive summary

The Working Group was tasked with a stock-taking exercise on access to and acceptance of cash. It was not asked to look at solutions, and therefore none are proposed. The Report confirms the disengagement of banks and credit institutions from cash, only willing to keep ATMs where they are profitable. The initial substitution of cash in branches for cash in ATMs, initiated for cost reduction, is now followed by a substitution of banks' ATMs for out-of-bank cash supply, where ATMs are not profitable.

The Report offer no synthesis of views between the different components of the ERPB. It merely starts from a juxtaposition of, often, irreconcilable, positions. Banks are presenting the reducing supply of cash as a consequence of a pre-existing reduced demand for it. However, it is acknowledged that when the number of ATMs reduces, the average amount of cash withdrawals increases, which is contradictory to the affirmation that cash demand decreases. This contradiction is repeated for example when the Report states that "*there are increasingly voiced concerns that access to cash and banks cash services level is deteriorating at least in certain areas of some countries",* and elsewhere that banks consider that "*access to cash has not decreased significantly even in rural/touristic sites".*

Throughout the Report, the leitmotif of banks is the cost of cash supply, and whether fees should be charged to consumers to access their cash. The way cash is delivered to cash users is not relevant to them and is outside their control. Key is that cash services are part of the basic payment account services which have been regulated in a Directive of 2014. It provides that bank fees charged to their customers do include these services. This issue is therefore, by and large, already settled by EU law. If banks decide not to deliver cash themselves, it remains their responsibility to organise the supply of cash, without charging for a service which customers have already paid for, in their banks and card fees (indispensable for withdrawing cash from an ATM).

It is therefore of some concern when banks suggest that the rules set by some Member States "*banning fees for withdrawal and deposits may have harmful side effects on access to cash which should be carefully considered (e.g. banks having to cover the cost or further discontinuing cash services due to foregone profits).* Whilst this is in essence what EU law mandates, this should be understood as a serious threat to cash supply.

There are a few unexpected developments in the report. First, the Report includes a very subjective and controversial section on the "*image of cash*" as an "obstacle" to its acceptance, which is all but positive. Beyond the usual negative attributes of cash (old-fashioned, outdated, dirty, etc.), the reader of the Report learns that the Working Group views cash as "*lacking technological advantages and used by digitally illiterates and non-participating citizens"*…

It also substantially exaggerates the risk of ending up with a counterfeit note, when the probability is extremely low (0.0012%). However, it says strictly nothing to compare this risk to the much more significant risk of card fraud. It further elevates counterfeit notes as “*an identified legal obstacle,* [which] *is that counterfeit money has no value by regulation”*. It obviously fails to see that a counterfeit banknote is not a banknote, it is not money, it is just a fraud. As such it is no more an “*identified legal obstacle*” to the acceptance of cash than card fraud is a “legal” obstacle to card payment.

Also unexpected in the Report are the various statements on how changes in payments habits by consumers do impact on retailers costs and prices charged by retailers to consumers. It is stated that 1) the shift from cash to card due to the pandemic has raised the cost of payments which were passed on to consumers and 2) that a mandatory cash acceptance, leading to a new shift from card to cash, would further increase costs which would also be passed on to consumers. Whatever the means of payment chosen, it is said that consumers will pay more!

Finally, the risks associated with robberies related to cash are also presented as a significant issue. However, the Report omits to mention that any business, retailer or other, has to protect its premises from robbers not just for cash but also for its goods. The specific protection of cash is only one of many protections. A bigger risk is cybercrime and threats, hacking or others which may disrupt any business for several days or sometime several weeks.

In essence, the Report suggests a new cash paradigm that cash users are invited to adapt to, which is that cash is no longer seen as critical by those who bear the main responsibility for making it available to their customers. Cash users are invited to accept to pay more for accessing *their* cash, or else banks warn that they will “*discontinue cash services due to foregone profits*”.

The very valuable outcome of the Report is to tell cash users that the continuity of the supply of cash as a public money is explicitly conditioned by the profitability of cash services in the banking sector.

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I. General overview of the ERPB report

The task of the ERPB Working Group on access to and acceptance of cash was explicitly a "*stock-taking*" exercise. Therefore, it cannot be a surprise that there are very few clues, if any, as to solutions that retailers and consumers might wish to read on how to address the difficulties to access it or to use it. This stock-taking exercise is, however, heavily biased by the very composition of the Working Group.

The main illustration of this bias in the Report is the affirmation that the cash evolution witnessed in society may only be a consequence of the reduced appetite of consumers for cash. For example, the report states that the availability of ATMs is only a function of the reduction in the numbers of cash withdrawals – though this is contradicted by the other affirmation elsewhere in the Report that the average amount of cash withdrawals is increasing with the reduction in numbers of ATMs.[2] It might seem logical to infer from this that the increase in the average withdrawal amount is a compensation for the difficulty faced by cash users to access cash when ATMs are removed and bank branches are closed down. Regrettably, the Working Group elicited not to go that far.

The Report further reads like an advocacy for the skimming of the cash market by the banks, leaving the less juicy part of it (rural areas) to other stakeholders when its profitability is compromised. The main stream of the Report is a justification of the cash market evolution against the objective of profitability of credit institutions, where they offer cash when it is not too annoying for them, and disengage from cash otherwise. The issue of the cost of cash services spreads in all sections of the Report, as a leitmotif of the concerns of a substantial part of the ERPB members.

Another illustration of the bias in the Report is evidenced by the following statement, when looking at the issue of the distance to access cash: "*the measure of distance from where people reside does not take fully into account commuting patterns as people in rural areas might commute and have access to cash near their working place*".[3] The shortcomings of this comment are partially included in the use of the conditional "*might*", when actually it is evident that many inhabitants of rural areas *do not* commute at all to go to their work: for these people, distance is a major issue for which commuting is not a solution. This includes local workers, retired people and other "*non-participating citizens*"[4] notably.

ESTA is concerned that cash users are kindly invited, in the Report, to find alternative solutions instead, which in many cases is limited to the use of their plastic card for paying, just in case cash is not readily

[2] Report at page 11.
[3] Report at page 18.
[4] Whatever is meant by this terminology used in the Report at page 30; see also section III.1 below.

available. The Report suggests that with these solutions in hand, cash availability is no longer a critical issue.

The heavy bias of the ERPB Working Group toward cashless is structural and intentional, as ESTA has stressed a number of times and notably when leaving the Working Group: the focus of the work of the ERPB is on cashless retail payments, explaining its composition.

II. Access to Cash

The Report is hardly a synthesis of viewpoints of the various segments of the cash market participating in the Working Group, but more a juxtaposition of their positions. There are striking differences, and sometimes oppositions, in these viewpoints, which is at the core of the issue. Unless there is some consensus on the reasons why cash is made less available, no workable solution may be proposed.

II.1 The place of cash is deteriorating

The very rationale of the setup of the Working Group is the issue of access to cash, and related shortages in cash availability, despite a continuously growing mass of cash in circulation. For example, the Report states that "*there are increasingly voiced concerns that access to cash and banks cash services level is deteriorating at least in certain areas of some countries*".[5] However a few pages later, the banks in the Working Group expressed the views that "*access to cash has not decreased significantly even in rural/touristic sites*",[6] albeit with an admission that the replacement of a branch by an ATM not always allows deposits of cash. The conclusion of the Report states that "*access to cash continues to be broadly ensured*", although the following section claims the opposite, with "*problems being reported in rural areas*".[7] The Report is not immune to these back-and-forth statements and it would have gained in clarity if positions had been grouped by categories of stakeholders instead.

The reason for this is simple: when a bank network decides to close a branch, "*The mostly mentioned obstacles to maintain/operate an ATM or a bank branch include a declining demand for cash, low market potential and lack of business profitability*". However, cash is, as emphasized repeatedly in the Report, a cost for banks, not a revenue. Moreover, the Report concedes that the average amount of cash withdrawals increases to compensate for the reduction in the number of ATMs,[8] which contradicts the affirmation of a "*declining cash demand*". Therefore, the effective reason behind a bank branch closure are essentially *market potential and business profitability*.

It is also further candidly admitted that "*the surge of electronic payments, and notably contactless payments, is likely to lead to further decrease in the use of cash, and, as a consequence, of ATMs*". ESTA agrees partly with this dismal prophecy, although the Report clearly misses the key point, which is that a number of PSPs and credit institutions, as evidenced in ESTA's report to the ERPB Working Group of June 2021, are openly megaphoning calls for using contactless payments as a prophylactic protection against COVID contamination, the use of cash being alleged to be "*extremely risky*".[9] These

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[5] Report at page 4.
[6] Report at page 12.
[7] Report at page 50.
[8] See also "The Cash Review", G4S, 2018 which provides evidence of this "compensation".
[9] See Section II.1 of ESTA's report to the ERPB working Group, 10 June 2021, at p. 12.

allegations have been made throughout 2020 and 2021, the fear of contamination to consumers being a strong marketing driver for promoting contactless payments. The Report should have made a mention to this, in order to take stock of the factors leading to the reduction of cash payments and the acceleration of the decrease in cash usage during the two years of pandemic, which Mr Fabio Panetta reminded that it has sped up digitalisation – i.e. the war on cash – by no less than seven years.[10]

However, by stating this, banks conveniently restrict the use of ATMs to withdraw transactional cash. It ignores the other reason for cash withdrawal, which is the precautionary/value storage reason of holding cash, as was evidenced again by the increased demand for cash at the beginning of the sanitary crisis.

In addition, nowhere in the Report is it recalled that, as most consumers ignore, the increase in contactless limits seriously increases their liability, under article 74 of PSD2. ESTA has called for more information on this to consumers, and, as advocated by some consumers' organisations, for the right for consumers to decide on their desired maximum contactless limit applying to their cards.

Therefore, in all likelihood, the "stock-taking" exercise in the Report with regard to the evolution of cash supply and the decrease in cash payments has left some key factors aside.

II.2 The cash business model

The Report does not analyse the business model for cash. Instead, it looks at the bank's business case for cash supply which is arguably an entirely different matter. ESTA's report has flagged the risks of competition distortions from 'independent' utilities set up by banks when they mutualise their cash services, particularly ATMs.[11] This mutualisation leads essentially to a reduction of costs to banks' cash supply, with no commensurate benefits to retails, consumers and cash users. It also leads to unfair competition with CIT companies. Interestingly, the Report confirms the anti-competitive attitude and abuse of market dominance by major PSPs in their strategy leading to the continuous reduction of ATM Interchange fees and cashback interchange fees.[12]

In relation to the business model, the Report discusses the issue of the cost of delivering cash to users and consumers. The Report refers to the debate in the Working Group on whether ATM fees should be allowed or not, with opposing views between credit institutions and consumer organisations notably.

However, consumers, banks' customers and cash users have strictly no control on how cash is delivered to them by banks holding their deposits, i.e. whether through branch tellers or ATMs. In the last ten to fifteen years or so, banks have moved from employees operated teller transactions to automated self-cash transactions for cost reasons: ATMs are the only remaining channel for cash services, almost entirely so now for withdrawals and increasingly so for deposits too.[13] In a not so unusual repetition of history, the endeavour to reduce the cost of cash services is now targeting ATMs. However, by doing

[10] Speech of Mr F. Panetta, ECB, "*Cash in time of turmoil*", 21 June 2021. Note that the "*digitalisation*" of payments also means the "*privatisation of money*".
[11] See section III.4 of ESTA's report to the ERPB, June 2021.
[12] Report at page 14.
[13] The Report states rightly, however, that the replacement of a branch by an ATM does not lead to "the same level of cash services", particularly if the ATMs does not allow for deposits (CRMs) – see report at p. 22.

so, the alternative channels considered in the Report are essentially outside banks (independent ATMs deployers, cash back and cash-in-shops).[14] The disengagement of banks from cash is a reality.

II.3 The ERPB Working Group Critical Omission: Directive 2014/92

ESTA thinks this discussion in the Report omits a very significant aspect, which is that cash services are part of the basic payment account provisions of EU Directive 2014/92 of 23 July 2014. The Directive provides that withdrawing cash from one's payment account is a basic service that banks have to offer to consumers[15] without limitation in the number of operations. Whilst it is the banks' responsibility to decide how to deliver the service in the most efficient and cost-effective manner, the banking sector still has a legal obligation to deliver the service to its customers who are paying for it.[16] The service, according to the Directive, is deemed to be remunerated by the fees charged by the bank to its customers, and they may not *"charge any fees beyond the reasonable fees, if any, irrespective of the number of operations executed on the payment account"*.[17] If a bank decides that an ATM is no longer viable in a specific area, it has the possibility to resort to an independent ATM deployer and pay for subcontracting the service, without surcharge to its customers. Who operates the cash service is not relevant when they already pay for it via the bank and card fees.

It should be noted that cash services should entail all denominations, in notes and in coins which are required for cash to operate smoothly. The perfect stealth killer of cash is to deprive retails from change money, and make cash payments impractical.[18]

The lack of reference to the relevant EU law with regards to cash services by banks is very unhelpful in the current debate. First, banks cannot ignore the legal obligation they have to provide basic services to their customers, to which cash services belong (deposits and withdrawal). The question cannot be therefore about who should be responsible for delivering cash if banks disengage from it, as they have a duty to deliver cash services. Second, it should be recalled that "*deposits are statutory debt that a bank owes its customers*", and that "*a lender should not have to pay a surcharge for collection of debt*".[19] The question of whether ATM services owned by banks should be charged or not is therefore not relevant, as the fees for cash services, as all other basic services, are regulated by law. This seems to ESTA a critical flaw of the Report on which much time has been apparently devoted when it should not have been, had the rules been recalled.

Similarly, one cannot understand the position of banks when they write in the Report that legislations proposed by some Member States "*in order to reduce the cost borne by consumers*", e.g. by banning fees for withdrawal and deposits "*may have harmful side effects on access to cash which should be carefully considered (e.g. banks having to cover the cost or further discontinuing cash services due to foregone profits).*"[20] This simply cannot be so as it may be against the law, as EU legislation provides that cash services is a basic account service, which cost is already covered by the banking fees that

[14] Report at page 56.
[15] Cf. Article 17.1.(c) : services enabling cash withdrawals within the Union from a payment account at the counter or at automated teller machines during or outside the credit institution's opening hours.
[16] A number of countries are passing legislation to secure a minimum level of cash services by banks.
[17] Except for credit cards.
[18] Cf Report at section 5.3.2.7 page 38.
[19] Tuomas Välimäki, Bank of Finland, 28 November 2018.
[20] See notably section 5.2.6.2 at page 29.

consumers pay to their banks. Member States' regulations banning additional fees for cash services simply enforce Directive 2014/92.

II.4 The "Cost of Non-Cash"

As recalled above, the Report puts strong emphasis on the cost to banks for making cash available to their customers. Little, however, is said on the "*cost of non-cash*", though the Report gives an important clue of what non-cash implies to retailers. The Report states that "*for some retailers, the shift from cash to cards* [initiated by calls to pay contactless due to fears of contamination from COVID] *increased dependencies on the dominant non-EU card schemes and ultimately resulted in higher prices for consumers*". So much so that "*cost drivers seemed to outweigh cost reduction for retailers switching to card*". [21]

What the Reports tells, in essence, is that reducing the availability of cash and nudging consumers towards cards rather than cash leads to three consequences: a substantial reduction in costs to banks in relation to the supply of cash, an increase in banks' and PSPs' fees from cards, as well as an increase in the costs to retailers and consumers. Reducing cash therefore leads to a transfer of wealth from consumers & retailers to banks and PSPs.

The "*cost of non-cash*" should also include contingency measures for disruption of electronic payment means, when no e-payment, card or otherwise, is possible because of failures in the network, cyber-attacks, hacking, power shortages, etc. Retailers and consumers know full well that cash is what still works when nothing else does: "*a high use of electronic retail payment methods may be a vulnerability, not a strength*", as Alan Boaden, then Head of Currency at the New Zealand Reserve, said at the time of the Christchurch earthquakes when the entire banking and ATMs network was down.[22]

III. Acceptance of cash

III.1 "*Image of cash*"

Whilst the mandate of the ERPB Working Group specifically referred to a stock-taking exercise, the Report entails a very subjective and controversial section on "*the image of cash*", which is presented in the Report as the first of the "*obstacles to the acceptance of cash*".[23] The "*perception*" of cash is "*a payment method which is less and less appropriate for modern societies*", "*outdated*", "*not cool*", "*cumbersome*".

Worse, other explicit negative features of cash in the eyes of the Working Group are that "*it lacks technological advantages and is used by digital illiterates and non-participating citizens*". This argument is surprising: as if the intrinsic and fundamental flaw of cash was to be the payment means of those in society deemed unworthy of any "smart" digital payment instrument. Denigrating the product is not enough: the contempt of cash is now extended to its users.

Further, the Report states that cash is "*increasingly discredited as a preferred payment instrument used for fraud or in connection to criminal activities*". ESTA strongly objects to this outdated cliché.

[21] Report at page 32.
[22] Presentation at ESTA's Conference, May 2017.
[23] Section 5.3.2.1 at page 30.

There are, however, advantages to cash which are omitted in the Report. ESTA would respectfully suggest that the Report could have added, as a fairness to all payment instruments, that cash cannot be subject to the bane of "card fraud", which as the name tells, is specifically and by definition directed at cards, and cards only. According to the ECB, card fraud on card-not-present payments (CNP – a type of payment which is usually not in competition with cash) rose by 17.2% from 2017 to 2018. In 2018, European card holders lost €1.80 billon to card fraud and another €1.9 bn in 2019.

One should also stress that cards are a serious issue for over indebtedness, with banks and PSPs charging significant interest on overdrafts and credits. For many people, and not only low-income households, cash is chosen on purpose precisely to strictly control their expenditure.

III.2 Sanitary and health issues

So goes the Report: "*banknote and coins are physical tokens that are handed over from person to person*", leading to its unavoidable "*soiling*" which associates cash to "*dirty*", "*unsanitary*" or "*even contagious*"[24]… The Report then candidly states that "*some actors have amplified this message during the pandemic and expressed strong preference for cashless payments and encourage consumers not to use cash*".

The authors of these lines probably refer to statements, such as those in MasterCard's position paper submitted to the EBA on 15 April 2020, that "*using cash is extremely risky*", and that "*contactless is the safest payment method*", to argue that the contactless limit is increased from 30 to 50 euros. The Report omits to say that "*the actors who expressed strong preference for cashless*" are those who earn massive profits from consumers and retailers on non-cash payments and make spurious allegations of risks of contaminations with cash, to scare off consumers from using it. The risk of contamination by cash has been widely refuted by all studies conducted by a number of laboratories on behalf of central banks, including the ECB.

III.3 Security risks of cash: a one-sided and biased approach

The Report also discusses the risks related to cash: loss, theft, "fraud", deceit, violence and threat. It even raises the risk of being given a counterfeit note. Unfortunately, nothing is said about cards and e-money-related risks which would seriously mitigate the risks of cash. If someone loses or get their cash stolen, the one-off loss suffered is strictly limited to the amount of cash lost. However, when a card is stolen, or, much worse, cloned, the amount lost from one or several fraudulent uses of the card can exceed the level of the deposit on the account. Violence and threats do also occur to obtain the card's PIN in order to use the card, and cards are subject to fraud at anytime, anywhere in the world without the card holder being able to know it until the fraudulent amounts appear on the card statements: 3/4 of card fraud happens in CNP situation, according to the ECB card fraud report, i.e. in cases when cash is not a payment option.

In the case of "*anonymous payments*" such as contactless, the amount lost can be several times the maximum limit and very few card holders are aware of their liability. And both card holders or the retailers can also face difficulties establishing their good faith for compensation. Further it should be recalled that until PSD1, the loss resulting from card fraud was mainly the card holder's cost until PSD1

[24] Section 5.3.2.2 at page 31.

capped it to 150 euros. Interestingly, when asking for the increase of contactless limits from 30 to 50 euros, Visa and MasterCard also asked in the same paper for the deadline for Strong Customer Authentication to be postponed: in other words, please increase the limit today, and we'll do something about security later.

III.4 Card fraud vs counterfeit notes

Unexpectedly, the Report puts a strong emphasis on the risk that consumers and retailers end up with a counterfeit note in their hands. Counterfeit notes are the bearer's loss which, however, remains very unlikely: in 2020, 459,229 counterfeit euro banknotes, with a face value of 21.4 million Euros, were removed from circulation.[25] This figure, albeit very low, further declined in 2021 for the fourth year in a row with 347.000 counterfeit notes withdrawn.[26] The number of counterfeits remains very low in proportion to the number of genuine euro banknotes, with as few as 12 fake notes per million, or 0.0012%. The assertion in the Report of a risk of counterfeit notes is also further contradicted by the ECB communication around the increased security features of the new ESII notes, which have reduced the number of counterfeit notes by around 2/3 since 2015 (from 900.000 to less than 350.000).

In comparison, card fraud amounted to 1.90 billion Euros in 2019, representing "*3.6% in every €100 spent using credit and debit cards* [which] *were lost to fraud in 2019*",[27] whilst the percentage of counterfeit notes was 23/1.000.000 the same year, or 0.0023%. The 21.4 million euros of total face value of counterfeit notes in 2020 therefore compares to 1,900 million euros (1.9 bn) lost in card fraud in 2019. In other words, the risk of a loss because of a counterfeit note is only 1.3% of the risk of being a victim of card fraud. Or, put differently, the risk of card fraud loss is 7,700 % higher than the risk of loss to a counterfeit euro note.

It is regrettable that the Report did not compare both risks for consumers and retailers, and limited itself to simply flagging the hypothetical risk of counterfeit banknotes. Probably because the comparison would have been much too favourable to cash for a group "*focused on cashless retail payments*".

The Report also looks at counterfeit banknotes in its section on acceptance of cash:[28] it states that "*an identified legal obstacle, however, is that counterfeit money has no value by regulation* (!) *even if accepted by the merchant*". This should simply not be in the Report – counterfeit notes are no more a "*legal*" obstacle to the acceptance of cash than card fraud (a much more serious issue) is to the acceptance of cards.

A counterfeit banknote is not a banknote, it is not money, it is a fraud. A payment with a fake banknote is not a payment, exactly as a fraudulent card payment accepted by any retailer is not a payment. ESTA sees strictly no reason why the very low (dixit the ECB) risk of counterfeit money should be used against cash in this Report, as an "*identifiable legal obstacle*". This only confirms how the Working Group is, in the majority of its components, heavily prejudiced against cash.

[25] Report, at Annex 7.
[26] https://www.ecb.europa.eu/press/pr/date/2022/html/ecb.pr220128~d65c3326c2.en.html
[27] https://www.ecb.europa.eu/press/pr/date/2021/html/ecb.pr211029_2~aa750b3a1c.en.html
[28] Report at page 37.

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ESTA recalls that there are relatively cheap devices that allow effective detection of counterfeit notes. The fact that very few retailers use them is probably a reflection of the very low occurrence (0.0012%) of fake notes.

III.5 Cost of CIT

The Report blames the "*consolidation*" and "*lower competition*" of the CIT market for an increase in prices.[29] As ESTA outlined in a meeting of WS2 in March 2021 and in our submission to the ERPB Working Group of June 2021, this is a misconception of the CIT market, as the market power is with customers, not with CIT companies. The CIT market is extremely competitive, with very low margins. It is very easy for any customer to "sponsor" a new entrant in any market, which will in most cases lead to an incumbent having to withdraw. In some markets (e.g. Belgium) the new provider is even required to take on the staff of the outgoing provider, when there is a change of CIT provider.

The Report also wrongly states that "*cross-border cash collections are mostly impossible due to different national legislation despite the EU cross border regulation*".[30] There are no national legislations on "cash transport" (apart from regulation on CIT companies and agents) which might prevent cross-border CIT services, other than the mandatory declaration of cash above €10K at the border. The absence of cross-border service is in the contrary dictated by the fact that there is hardly any cross-border demand for CIT services: in most cases, customers request that their cash is stored in their home country, not in a nearby cash centre in a foreign country. The CIT regulation provides the regulatory framework for cross-border services, however, very few licences have been applied for so far as a reflection of the limited demand/need. The first implementation report of the Commission did not raise any particular difficulties, but confirmed the very low need for cross-border CIT services.

III.6 Increase in costs and prices to consumers — cards… and cash !

Noteworthy, Eurocommerce considers that "*the hypothetical mandatory acceptance of cash would inevitably lead to rising costs which somehow will have to be passed through to the consumers by means of higher prices*" (p. 35). So, the **shift from cards to cash** related to a mandatory acceptance of cash would cost, and consumers would have to pay higher prices.

However, Eurocommerce also states elsewhere in the Report that **the shift from cash to card** due to the pandemic "*implied higher costs for payments* […] *resulting in higher prices to consumers*" too (p. 32).

So whatever changes in payment means may occur, Eurocommerce will make consumers pay more!

Also of interest is that the Report states that cash is "*cheaper for low value payments and high cash usage*". The Report recalls the findings of the Commission 2015 "*survey on merchant's cost for processing cash and card payments*" which gave evidence that cash was cheaper than cards. Eurocommerce further states that the average cost of cards acceptance is "*now even higher than in 2015*". Maybe the reason is the one put forward by ATMIA in the Report, namely that "*the weight of cost/capital expenditure of digital payments is much higher compared to cash*".[31]

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[29] Report at page 35.
[30] Dito.
[31] Report at page 36.

These remarks are quite remarkable as the shift from cash to card and the pressure by card operators initiated by COVID scaremongers targeted particularly small value payments, where cash had a quasi-monopoly. They also appear to be the most profitable for card operators and banks and the costliest to retailers.

III.7 The cost of managing cash

The Report goes extensively through the cost of "managing" cash[32] within an organisation or a retail. It includes protection from theft, including from staffers, to the cost of outsourced services. The protection of any retail against thieves is, however, not just related to cash, but also to goods. Therefore, the protection of cash is only a marginal protection in addition to what is required to protect the premises from theft.

ESTA would, however, submit that any business today, and particularly those dealing with non-cash have to be protected against cybercrimes and cyber-attacks, hackers and other aggressions which can harm their business very seriously, and do so for several days or weeks. It is therefore not appropriate to single out cash when security becomes an overarching issue worldwide.

III.8 EUCJ joint cases C422/19 and C-423/19

As the Report rightly recalls, the ruling deals with "*statutory imposed payments*" and does not cover all payments. The Report also states that "*the freedom of contract allows a payer and a payee to agree not to use cash*".[33] The question of contractual freedom still needs to be clarified, and particularly if *fait accompli* (e.g. "*cash not accepted here*") meets the definition of "*a payer and a payee agreeing not to use cash*", if the payer wishes to pay in cash. Contrary to what is stated in the Report, being "*informed*" does not imply *agreeing*.

ESTA is of the view that Article 128 TFEU has gained direct effect by virtue of the 2010 recommendation that specifies what legal tender means. It is not relevant that the recommendation is a non-binding act, since the purpose is to clarify primary law, which is binding, and therefore to provide it with a direct effect.

Conclusions

The unexpected and welcome virtue of the ERPB Working Group Report on access to and acceptance of cash is to flag beyond any doubt that there is one main driver for the reduction in the supply of cash, namely the cost of cash to banks. The other, related, driver is the considerable revenue that banks and PSPs are accumulating from card fees from cash users, consumers and retailers. Whilst banks are disengaging from cash, and significantly so in rural areas where they remove their ATMs asking other stakeholders to take responsibility for the supply of cash to the public, their cash strategy disclosed in the Report is to 'skim' the cash market wherever, and as long as, cash remains profitable.

[32] Section 5.3.2.5 at page 36
[33] Report at p. 37

Cash demand remains high, even if cash used in retail transactions reduces due to the permanent nudging in favour of cards and the constant allegations of fears of contamination. The Report confirms this fact by acknowledging that the average amount of cash withdrawn increases when ATMs are removed.

The Report therefore confirms ESTA's analysis of the evolution of supply of cash. Consumers and retailers are, in their vast majority, pushed out of cash by a category of stakeholders, overwhelmingly represented in the ERPB Working Group,[34] which has a competing product to offer and massive revenues to earn from it. Cash, however, could be very competitive if banks were investing in cash technology for the benefit of their customers, consumers or retailers. They are the ones primarily affected by the "*cost of non-cash*", when cash becomes scarce and cashless fails.

The vision for the future of cash in the Report is that cash users are summoned to adapt to some sort of a new paradigm of cash supply advocated in the Report: cash becomes a nice-to-have, no longer a must-have. Banks will continue to supply cash provided they continue to find their financial interest and manage to cover their costs, or else, as the Report warns, they "*will discontinue cash services due to foregone profits".* Those leaving in rural areas will continue to have access to cash, however only if they do commute for their work in cities. In any case they are invited to use their card when cash is not readily available. Access to cash, the only form of public money, is explicitly conditioned to bankers' profits.

Indeed, ESTA could not have endorsed such a Report. However, the Report provides a valuable clarification of the reasons which pertain to reducing cash availability. We call upon the ERPB to make our June submission and this response available on its website, so as to balance the views expressed in the Report.

[34] The focus of the ERPB is on cashless payments, explaining its composition.