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The Legal Tender Status of the Digital Euro

**How the Attribution of Legal Tender Status to the Digital Euro Pushes
Mandatory Acceptance Beyond Its Breaking Point**

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PREFACE

This paper is the last I will write as a law student. After five years of law at KU Leuven and one final year pursuing an LLM in International Business Law at the ULB, the end of my studies has now arrived. It has been a long road, sometimes challenging but above all enriching. I did not know, six years ago, how much these years would shape who I am today. I leave them behind with pride and with gratitude. The next chapter is a career as a lawyer in corporate M&A, and it is one I am stepping into with real excitement.

I did not get here alone, and the people who helped me deserve more than a few lines. My deepest gratitude goes to my parents, who supported me unconditionally throughout my studies. As doctors, law was a foreign language to them, and they cheered me on in it anyway. My two sisters endured more legal explanations than most people will encounter in a lifetime, and they did so with only minor complaints. For their patience, their warmth, and their willingness to nod along, I am more grateful than they know. My grandparents, too, deserve a heartfelt thank you, for their loving support, for spoiling me with sweet treats and for their genuine interest in everything I was doing. Thank you to my friends, who turned the library into a place for giggling as much as studying, and who gave me memories I will look back on for the rest of my life with nothing but a very big smile. Finally, and most importantly, my deepest thanks go to Joran, who has my whole heart and who somehow made room in his life for this paper too. Thank you for being exactly who you are. The best chapters are, unlike this paper, still unwritten.

I have tried to approach this subject thoughtfully, but no argument is airtight and no text is truly finished once it leaves its author's hands. Rather than offering a final answer, I hope this paper serves as the beginning of a broader discussion on the legal implications of the digital euro. The words are on paper. The reading is yours.

Anouchka De Jaegere

Heverlee, 19 May 2026

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INTRODUCTION

The emergence of Central Bank Digital Currencies (CBDCs) represents one of the most significant developments in modern monetary law. CBDCs are digital payment instruments denominated in the national currency that constitute a direct liability of the issuing central bank.¹ They have come to occupy an increasingly central place in both academic research and policy debate.² Within the European Union, this debate has crystallised around the European Commission's legislative proposal of 28 June 2023 for a Regulation on the establishment of the digital euro, a retail CBDC to be issued by the Eurosystem for use by natural and legal persons throughout the euro area.³

The attribution of legal tender status to the digital euro is the cornerstone of the Commission's proposal. Legal tender, in its classical formulation, entails three cumulative attributes: mandatory acceptance by the creditor, face value parity, and the power to discharge payment obligations.⁴ This tripartite structure has been authoritatively interpreted by the Court of Justice of the European Union (CJEU) in the landmark judgment *Hessischer Rundfunk*.⁵ In that case, the Court confirmed that the concept of legal tender contained in Article 128(1) of the Treaty on the Functioning of the European Union (TFEU) carries an autonomous meaning in EU law.⁶ It further establishes that this concept entails a principle of mandatory acceptance, subject to justifiable and proportionate exceptions.⁷

¹ Bank for International Settlements, Central Bank Digital Currencies: Foundational Principles and Core Features (BIS Innovation Hub, Report No 1, 2020) 3.

² Lambis Dionysopoulos, Miriam Marra and Andrew Urquhart, 'Central Bank Digital Currencies: A Critical Review' (2024) 91 International Review of Financial Analysis 103031, 1.

³ Matteo Cotugno and others, 'Ready for a Digital Euro? Insights from a Research Agenda' (2024) 67 Research in International Business and Finance 102117, 2.

⁴ Christos V Gortsos, 'The European Commission's Proposal for an EU Regulation "On the Establishment of the Digital Euro"' (2026) Accounting, Economics, and Law (advance online publication), 16, citing CJEU, Joined Cases C-422/19 and C-423/19 *Johannes Dietrich and Norbert Häring v Hessischer Rundfunk* ECLI:EU:C:2021:63 [2021].

⁵ Commission Recommendation 2010/191/EU on the Scope and Effects of Legal Tender of Euro Banknotes and Coins [2010] OJ L83/70, point 1.

⁶ Joined Cases C-422/19 and C-423/19 *Johannes Dietrich and Norbert Häring v Hessischer Rundfunk* ECLI:EU:C:2021:63 [2021] para 45.

⁷ Joined Cases C-422/19 and C-423/19 *Johannes Dietrich and Norbert Häring v Hessischer Rundfunk* ECLI:EU:C:2021:63 [2021] paras 46, 49, 67.

Extending this legal tender status to a digital, account-based, and intermediary-dependent currency raises a fundamental legal question, which this paper addresses as its central research question: “How does the attribution of legal tender status to the digital euro test the limits of the obligation of mandatory acceptance by creditors?”

This paper argues that although the Commission's proposal rests on sound legal foundations, the mandatory acceptance regime it introduces is structurally ambiguous and does not sufficiently account for the differences between the digital euro and traditional cash. This ambiguity risks undermining both the effectiveness of the legal tender status and the contractual freedom of creditors, to an extent that is difficult to reconcile with the proportionality principle as developed in EU law.⁸

This paper is structured as follows. In section I, I will explain the concept of legal tender within EU law and examine its tripartite structure. Section II turns to the Commission's proposal and the mandatory acceptance regime it establishes for the digital euro. It identifies its structural differences from cash-based legal tender and the uncertainties created by the exceptions to the mandatory acceptance. Section III critically assesses the mandatory acceptance obligation, examining its tensions with contractual freedom, the proportionality concerns it raises, and the specific weaknesses in the proposal's design. In section IV, I will offer normative recommendations. A conclusion follows, drawing together the key findings of the analysis.

In terms of sources and methodology, the analysis relies primarily on the Commission's proposal of 28 June 2023 and its principal preparatory works. Academic literature is engaged with throughout, but since the digital euro remains at the proposal stage, most existing scholarship is descriptive rather than normative. The normative recommendations in Section IV are therefore limited in their doctrinal grounding and should be read as a first step in a debate that is only beginning to take shape.

⁸ Šime Jozipović, Marko Perkušić and Nina Mladinić, 'A Comparative Review of the Legal Status of National Cryptocurrencies and CBDCs: A Legal Tender or Just Another Means of Payment' (2024) 40(1) *Pravni Vjesnik* 77, 79.

SECTION I: LEGAL TENDER: CONCEPT AND EU FRAMEWORK

Any assessment of the legal tender status of the digital euro must begin with the concept of legal tender itself. This section examines the three defining characteristics of legal tender and establishes how it has been interpreted within the EU legal order.

1. THE TRIPARTITE STRUCTURE

The concept of legal tender has no universally agreed international definition.⁹ The prevailing view, however, holds that a monetary instrument has legal tender status when a creditor is obliged by law to accept it in discharge of a debt, at its nominal face value.¹⁰ This formulation reveals a tripartite structure: the obligation of mandatory acceptance owed by the creditor, discharge effect so that the payment obligation extinguishes, and face value parity.¹¹

First, mandatory acceptance requires that a creditor cannot refuse the legal tender in settlement of a payment obligation, unless the parties have contractually agreed on an alternative means of payment.¹² Second, the discharge effect means that a debtor who pays with legal tender to the creditor is legally released from the underlying obligation.¹³ Third, and finally, face value parity ensures that the monetary value of legal tender corresponds exactly to the amount indicated on the instrument, precluding any discount or surcharge.¹⁴

These three elements are functionally interdependent. Mandatory acceptance without discharge effect would reduce legal tender to a mere payment option, providing no security to the payer. Discharge effect without face value parity would expose the creditor to a hidden reduction in the real value of the debt. And face value parity without mandatory acceptance

⁹ F A Mann, *The Legal Aspect of Money* (4th edn, OUP 1982) 40.

¹⁰ Euro Legal Tender Expert Group (ELTEG), 'Report of the Euro Legal Tender Expert Group (ELTEG) on the Definition, Scope and Effects of Legal Tender of Euro Banknotes and Coins' (European Commission/European Central Bank, 2010) 4.

¹¹ Filippo Zatti and Rosa Giovanna Barresi, 'The Digital Euro Package: from Legal Tender to Payment Services Providers' in C Pastor Sempere (ed), *Governance and Control of Data and Digital Economy in the European Single Market* (Springer 2025) 4.

¹² Commission Recommendation (2010/191/EU) of 22 March 2010 on the scope and effects of legal tender of euro banknotes and coins [2010] OJ L83/70; Christian Pfister, 'Digital Euro: The Case Against Legal Tender' (SUEF Policy Brief No 799, February 2024), 2.

¹³ Commission Recommendation (2010/191/EU) of 22 March 2010 on the scope and effects of legal tender of euro banknotes and coins [2010] OJ L83/70.

¹⁴ Commission Recommendation (2010/191/EU) of 22 March 2010 on the scope and effects of legal tender of euro banknotes and coins [2010] OJ L83/70.

would be an empty guarantee. Together, they form the foundation of monetary sovereignty: the State's power to determine which instruments can be used to lawfully settle private obligations.

2. LEGAL TENDER IN EU LAW

The concept of legal tender, as outlined above, has a specific and autonomous meaning in EU law, rooted in Article 128 TFEU and authoritatively interpreted by the Court of Justice in *Hessischer Rundfunk*.

Under Article 128(1) TFEU and Articles 10 and 11 of Council Regulation (EC) No 974/98, the only instruments with legal tender status in the euro area are euro banknotes, issued by the Eurosystem, and euro coins, issued by Member States.¹⁵ Both instruments are physical, immediately transferable, anonymous, and function independently of any payment infrastructure operated by a third party.

The CJEU's judgment in *Hessischer Rundfunk* of 26 January 2021 is the foundational case for understanding the EU-law concept of legal tender. The Court held, first, that the concept of legal tender in Article 128(1) TFEU is an autonomous concept of EU law requiring uniform interpretation.¹⁶ Second, that this concept entails an obligation in principle to accept legal tender for the payment of debts denominated in euro, at full face value, with the effect of discharging the debt.¹⁷ Third, that Member States may restrict the mandatory acceptance obligation within the scope of their own competences, provided that the restriction pursues a legitimate public interest objective and it is proportionate to that objective.¹⁸

The Court's reasoning in *Hessischer Rundfunk* also clarified the relationship between legal tender and institutional freedom. Restrictions on the obligation to accept may be adopted at national level, but they cannot undermine the essence of legal tender, are required to pursue a legitimate public interest objective, and are subject to a proportionality requirement.¹⁹ These

¹⁵ Article 128 TFEU; Articles 10 and 11 Council Regulation (EC) No 974/98.

¹⁶ CJEU, Joined Cases C-422/19 and C-423/19 Johannes Dietrich and Norbert Häring v Hessischer Rundfunk ECLI:EU:C:2021:63 (26 January 2021) para 49.

¹⁷ CJEU, Joined Cases C-422/19 and C-423/19 Johannes Dietrich and Norbert Häring v Hessischer Rundfunk ECLI:EU:C:2021:63 (26 January 2021) paras 67, 68.

¹⁸ Christos V Gortsos, 'The European Commission's Proposal for an EU Regulation "On the Establishment of the Digital Euro"' (2026) Accounting, Economics, and Law (advance online publication), 16.

¹⁹ Seraina N Grünwald, Corinne Zellweger-Gutknecht and Benjamin Geva, 'Digital Euro and ECB Powers' (2021) 58 Common Market Law Review, 22.

criteria, developed for cash-based legal tender, now form the constitutional framework against which the mandatory acceptance regime of the digital euro is to be assessed.

A further implication of *Hessischer Rundfunk* is that legal tender is more than a technical rule; it carries real constitutional significance in the EU legal order. Legal tender instruments serve as the monetary anchor of the euro by ensuring that central bank money is always available as the ultimate means of settling a debt denominated in euro. This is what sustains public trust in the single currency. It also sets legal tender apart from private payment instruments which, however widely used in practice, nobody is legally required to accept.²⁰

SECTION II: LEGAL TENDER STATUS OF THE DIGITAL EURO

Building on the constitutional framework established in Section I, this section examines the digital euro's mandatory acceptance regime as proposed by the Commission in 2023. It then turns to the structural differences between the digital euro and cash-based legal tender, and the uncertainties arising from the exceptions to the mandatory acceptance regime.

1. THE COMMISSION'S 2023 PROPOSAL

On 28 June 2023, the European Commission presented its proposal for a Regulation on the establishment of the digital euro as part of the broader 'Single Currency Package'. Alongside the digital euro proposal, the Package also included a proposal for a Regulation on the legal tender of euro banknotes and coins, which codifies and reaffirms the legal tender status of cash throughout the euro area.²¹ The two proposals are thus complementary: the legal tender status conferred on the digital euro is not designed to displace that of banknotes and coins, but to exist alongside it.

The digital euro proposal is based on Article 133 TFEU, which empowers the co-legislators to adopt measures necessary for the use of the euro as the single currency.²² The proposal defines the digital euro as 'the digital form of the single currency available to natural

²⁰ Šime Jozipović, Marko Perkušić and Nina Mladinić, 'A Comparative Review of the Legal Status of National Cryptocurrencies and CBDCs: A Legal Tender or Just Another Means of Payment' (2024) 40(1) *Pravni Vjesnik* 77, 80-81.

²¹ Proposal for a Regulation of the European Parliament and of the Council on the Legal Tender of Euro Banknotes and Coins COM(2023) 364 final.

²² Article 133 TFEU; Joe Cannataci and others, 'The Digital Euro: An Analysis of the Commission's Proposed Legislation' [2025] *Uni Hamburg* 3.

and legal persons'.²³ In terms of issuance of the digital euro, the proposal mirrors the structure of Article 128(1) TFEU for banknotes.²⁴ The ECB holds the exclusive right to authorise the issuance of the digital euro, while the ECB and the National Central Banks of euro area Member States are authorised to issue it.²⁵

The attribution of legal tender status to the digital euro is presented in the proposal as essential to its usability across the euro area.²⁶ This ensures the continued availability and accessibility of central bank money in its role of monetary anchor, since cash alone can no longer meet the needs of a rapidly digitalizing economy.²⁷ Existing digital payment instruments offer no substitute, however, as they rely on commercial bank money rather than central bank money. What the digital euro seeks to provide, therefore, is a digital instrument issued by the Eurosystem with legal tender status, available to the public for daily transactions.²⁸ In other words, a digital equivalent to cash.

Article 7 and 8 of the proposal constitute the core provisions governing the legal tender status of the digital euro. Article 7(1) confers legal tender status on the digital euro, while Article 7(2) confirms its tripartite structure.²⁹ Article 7(3)-(5) translates the tripartite structure into binding obligations: mandatory acceptance by the payee, acceptance at full face value without surcharge, and discharge of the payment obligation upon tender.³⁰ The proposal

²³ Article 2(1) Proposal for a Regulation of the European Parliament and of the Council on the Establishment of the Digital Euro COM(2023) 369 final.

²⁴ Gerhard Rösl and Franz Seitz, 'Central Bank Digital Currency and Cash in the Euro Area: Current Developments and One Specific Proposal' (2022) 55(4) Credit and Capital Markets 523, 525.

²⁵ Article 4(1) Proposal for a Regulation of the European Parliament and of the Council on the Establishment of the Digital Euro COM(2023) 369 final.

²⁶ Recital 16 of Proposal for a Regulation of the European Parliament and of the Council on the Establishment of the Digital Euro COM(2023) 369 final; Christos V Gortsos, 'Towards a Central Bank Digital Currency (CBDC) for the Euro Area: A Primer on the European Commission's Proposal for a Regulation of the EU Co-Legislators "On the Establishment of the Digital Euro"' (EBI Working Paper Series No 170, 2024), 35.

²⁷ Seraina N Grünewald, Corinne Zellweger-Gutknecht and Benjamin Geva, 'Digital Euro and ECB Powers' (2021) 58 Common Market Law Review, 2.

²⁸ Seraina N Grünewald, Corinne Zellweger-Gutknecht and Benjamin Geva, 'Digital Euro and ECB Powers' (2021) 58 Common Market Law Review, 3; ELTEG Final report of the Euro Legal Tender Expert Group (ELTEG) of 6 July 2022, 9.

²⁹ Article 7(1)-(2) Proposal for a Regulation of the European Parliament and of the Council on the Establishment of the Digital Euro COM(2023) 369 final; Christos V Gortsos, 'Towards a Central Bank Digital Currency (CBDC) for the Euro Area: A Primer on the European Commission's Proposal for a Regulation of the EU Co-Legislators "On the Establishment of the Digital Euro"' (EBI Working Paper Series No 170, 2024), 35-36.

³⁰ Article 7(1)-(2) Proposal for a Regulation of the European Parliament and of the Council on the Establishment of the Digital Euro COM(2023) 369 final.

explicitly grounds this regime in the CJEU's *Hessischer Rundfunk* judgment.³¹ Furthermore, the territorial scope of legal tender status is governed by Article 8, which extends the mandatory acceptance obligation to both offline payments that take place within the euro area and online payments to a payee residing or established in the euro area.³²

2. STRUCTURAL DIFFERENCES WITH CASH-BASED LEGAL TENDER

The proposal presents the digital euro as the legal equivalent of cash. However, the two instruments are fundamentally different and those differences have direct consequences for the mandatory acceptance obligation. These structural differences are not merely technical as they determine whether the obligation to accept can, in practice, actually be performed.³³

First, the digital euro is an account-based instrument requiring a digital payment account and the involvement of payment service providers (PSPs) as intermediaries.³⁴ PSPs are responsible for providing digital euro payment accounts, through which users can place and withdraw funds and execute and receive payment transactions.³⁵ In their capacity as distributors of the digital euro, these PSPs are subject to the requirements of Directive 2015/2366.³⁶ The Commission's proposal opens distribution of the digital euro to a wide range of intermediaries: all account servicing PSPs under Directive 2015/2366 are entitled to distribute the digital euro, regardless of their location within the European Economic Area (EEA).³⁷ The dependency on intermediaries has direct consequences for the mandatory acceptance obligation.

³¹ Recital 14 of Proposal for a Regulation of the European Parliament and of the Council on the Establishment of the Digital Euro COM(2023) 369 final; Christos V Gortsos, 'The European Commission's Proposal for an EU Regulation "On the Establishment of the Digital Euro"' (2026) Accounting, Economics, and Law (advance online publication), 17.

³² Article 8(1)-(2) Proposal for a Regulation of the European Parliament and of the Council on the Establishment of the Digital Euro COM(2023) 369 final;

³³ Christian Pfister, 'Digital Euro: The Case Against Legal Tender' (SUEF Policy Brief No 799, February 2024), 2.

³⁴ Christos V Gortsos, 'Towards a Central Bank Digital Currency (CBDC) for the Euro Area: A Primer on the European Commission's Proposal for a Regulation of the EU Co-Legislators "On the Establishment of the Digital Euro"' (EBI Working Paper Series No 170, 2024), 48.

³⁵ Recital 23 Proposal for a Regulation of the European Parliament and of the Council on the Establishment of the Digital Euro COM(2023) 369 final.

³⁶ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market [2015] OJ L337/35

³⁷ Recital 23 Proposal for a Regulation of the European Parliament and of the Council on the Establishment of the Digital Euro COM(2023) 369 final.

Although cash requires intermediary infrastructure for withdrawal, it requires none at the point of payment.³⁸ It can be accepted without technology, connectivity or an intermediary. The digital euro, by contrast, remains structurally dependent on technological infrastructure and intermediary services even at the point of payment. Whether online or offline, its use requires a digital euro payment account with a PSP and a functional device.³⁹ For online payments, an internet connection is additionally required.⁴⁰ The capacity to accept is therefore not a given as it depends on both the payee's own technological infrastructure and the continued availability of intermediary services.

Second, the digital euro will not be fully anonymous. The ECB has confirmed that complete anonymity is not a viable option from a public policy standpoint, as it would create risks of the digital euro being used for illicit purposes.⁴¹ Accordingly, the proposal excludes full anonymity, but the extent of that exclusion turns on whether the payment is online or offline. For online payments, PSPs are subject to customer due diligence (CDD) and know-your-customer (KYC) obligations under Regulation (EU) 2024/1624 and are expressly prohibited from maintaining anonymous accounts.⁴² All online transactions are processed through PSPs and are therefore subject to anti-money laundering (AML) and counter-terrorist financing (CTF) controls.⁴³ As a result, full anonymity is impossible for online digital euro payments.⁴⁴ The position is different for offline payments. The user is identified at the point of account opening, but no data monitoring occurs at the point of payment.⁴⁵ The privacy afforded

³⁸ Patrick Schueffel, 'Can CBDC Mimic Cash? A Deep Dive into the Digital Euro Case' (2025) 18(7) *Journal of Risk and Financial Management* 394, 25.

³⁹ Article 2 and Recital 18 Proposal for a Regulation of the European Parliament and of the Council on the Establishment of the Digital Euro COM(2023) 369 final.

⁴⁰ Patrick Schueffel, 'Can CBDC Mimic Cash? A Deep Dive into the Digital Euro Case' (2025) 18(7) *Journal of Risk and Financial Management* 394, 13 and 26.

⁴¹ Introductory statement by Fabio Panetta, Member of the Executive Board of the ECB, at the Committee on Economic and Monetary Affairs of the European Parliament, 'A digital euro that serves the needs of the public: striking the right balance' (2022).

⁴² Article 79 Regulation (EU) 2024/1624 of the European Parliament and of the Council of 31 May 2024 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing

⁴³ Explanatory Memorandum, page 3 of Proposal for a Regulation of the European Parliament and of the Council on the Establishment of the Digital Euro COM(2023) 369 final; Gerhard Rösl and Franz Seitz, 'Central Bank Digital Currency and Cash in the Euro Area: Current Developments and One Specific Proposal' (2022) 55(4) *Credit and Capital Markets* 523, 537.

⁴⁴ Gerhard Rösl and Franz Seitz, 'Central Bank Digital Currency and Cash in the Euro Area: Current Developments and One Specific Proposal' (2022) 55(4) *Credit and Capital Markets* 523, 545.

⁴⁵ Recital 75 Proposal for a Regulation of the European Parliament and of the Council on the Establishment of the Digital Euro COM(2023) 369 final.

by offline digital euro payments is in that respect comparable to cash as scrutiny attaches to withdrawal, not to the transaction itself. By contrast, physical cash enables fully anonymous transactions and is universally interchangeable without leaving a trace.⁴⁶ As a result, the introduction of the digital euro represents a fundamental shift in the nature of central bank money, closing off the possibility of a true digital equivalent to cash, of which full anonymity is a defining characteristic.⁴⁷

Third, the digital euro will be subject to holding limits set by the ECB, which Article 16 expressly empowers to restrict the use of the digital euro as a store of value. These limits are designed to safeguard financial stability by preventing excessive substitution of commercial bank deposits with the digital euro.⁴⁸ ECB representatives have frequently cited €3,000 per person as a likely holding limit, a figure that roughly matches the average monthly net income of euro area households.⁴⁹ At that level, the digital euro would function primarily as a means of payment, rather than a form of investment.⁵⁰ Cash, by contrast, carries no equivalent holding limit, but it is not unrestricted. Member States retain the option to cap cash payments, and several have exercised it.⁵¹ The two instruments are therefore subject to different types of constraint. The digital euro restricts holding but not payments, while cash restricts payments but not holding.

3. THE EXCEPTIONS AND THEIR AMBIGUITIES

The structural differences between the digital euro and cash do not go entirely unacknowledged by the proposal. They are reflected, at least in part, in an exhaustive list of four categories of exceptions to the mandatory acceptance obligation. These exceptions,

⁴⁶ Patrick Schueffel, 'Can CBDC Mimic Cash? A Deep Dive into the Digital Euro Case' (2025) 18(7) *Journal of Risk and Financial Management* 394, 26.

⁴⁷ Gerhard Rösl and Franz Seitz, 'Central Bank Digital Currency and Cash in the Euro Area: Current Developments and One Specific Proposal' (2022) 55(4) *Credit and Capital Markets* 523, 538.

⁴⁸ Nikos Maragopoulos, 'Exploring the Impact of the Digital Euro on Euro Area Banks' in Marco Annunziata, Christos Hadjiemmanuil and Bart Joosen (eds), *Central Bank Digital Currency – The Birth of the Digital Euro* (Palgrave Macmillan 2025) 257.

⁴⁹ Ulrich Bindseil, 'Tiered CBDC and the Financial System' (ECB Working Paper Series No 2351, January 2020), 24.

⁵⁰ Nikos Maragopoulos, 'Exploring the Impact of the Digital Euro on Euro Area Banks' in Marco Annunziata, Christos Hadjiemmanuil and Bart Joosen (eds), *Central Bank Digital Currency – The Birth of the Digital Euro* (Palgrave Macmillan 2025) 257.

⁵¹ E.g. Belgium at €3,000, France at €1,000, and Austria at €10,000.

however, give rise to legal uncertainties that call into question the coherence and effectiveness of the mandatory acceptance regime as a whole.

The first exception, in Article 9(a), exempts microenterprises and non-profit legal entities from the obligation to accept the digital euro, recognising that the acquisition of the required infrastructure and the acceptance costs would be disproportionate for them.⁵² The proposal defines a microenterprise as an enterprise with fewer than ten employees and an annual turnover or balance sheet total not exceeding €2 million. This exemption does not apply, however, where the microenterprise or non-profit legal entity already accepts comparable digital means of payment, such as debit cards or instant payments at the point of interaction.⁵³ Since credit transfers and direct debits are not initiated at the point of interaction, they fall outside the definition of comparable digital means of payment and do not affect the exemption. The ECB has proposed amending this, arguing that the distinction between debit cards and credit cards should not impact the acceptance obligation, such that a business accepting any form of card payment should not be able to refuse the digital euro.⁵⁴ The practical reach of this exception may therefore be limited. In a world where card payments are the norm, few businesses will qualify.

The second exception, under Article 9(b), covers refusals made in good faith on legitimate and temporary grounds proportionate to the concrete circumstances beyond the control of the payee.⁵⁵ Illustrative examples include a power outage preventing an online payment or a defective device rendering offline or online acceptance impossible.⁵⁶ This exception directly reflects the infrastructure dependency of the digital euro identified above. Unlike cash, which requires no technology to change hands, the digital euro depends on the continued availability of technology that may, at any moment, fail.

⁵² Article 9a and Recital 18 Proposal for a Regulation of the European Parliament and of the Council on the Establishment of the Digital Euro COM(2023) 369 final.

⁵³ Recital 18 Proposal for a Regulation of the European Parliament and of the Council on the Establishment of the Digital Euro COM(2023) 369 final.

⁵⁴ ECB, 'Opinion of the European Central Bank of 31 October 2023 on the Digital Euro' (CON/2023/34, 2023), 41.

⁵⁵ Article 9b Proposal for a Regulation of the European Parliament and of the Council on the Establishment of the Digital Euro COM(2023) 369 final.

⁵⁶ Recital 18 Proposal for a Regulation of the European Parliament and of the Council on the Establishment of the Digital Euro COM(2023) 369 final.

The third exception, in Article 9(c), exempts natural persons acting for purely personal or household activities from the mandatory acceptance obligation.⁵⁷ This reflects the general principle that legal tender obligations are directed at commercial and professional actors rather than private individuals operating outside any economic activity. The exemption is therefore grounded in both proportionality and practical common sense.⁵⁸

The fourth exception, under Article 9(d), allows the parties to agree by prior mutual consent on a different means of payment.⁵⁹ This provision acknowledges contractual freedom but is immediately qualified by Article 10, which prohibits payees subject to the mandatory acceptance obligation from unilaterally excluding digital euro payments through non-individually negotiated contractual terms or commercial practices.⁶⁰ A contractual term qualifies as not individually negotiated where it has been drafted in advance and the payer had no opportunity to influence its substance. The proposal thereby draws a clear line between an actual mutual agreement, which is permitted, and the unilateral exclusion of the digital euro disguised as a contractual term, which is not.

Individually, each exception raises questions of scope and application; collectively, they raise serious doubts about whether the mandatory acceptance obligation, as currently drafted, can carry the legal and practical weight that legal tender status requires.

SECTION III: CRITICAL ASSESSMENT OF THE MANDATORY ACCEPTANCE

The mandatory acceptance obligation introduced by the proposal does not exist in a legal vacuum. It operates within a broader EU legal framework that protects contractual freedom, demands proportionality, and requires legal certainty. This section examines whether the Commission's proposal meets those requirements.

⁵⁷ Article 9c Proposal for a Regulation of the European Parliament and of the Council on the Establishment of the Digital Euro COM(2023) 369 final

⁵⁸ Recital 18 Proposal for a Regulation of the European Parliament and of the Council on the Establishment of the Digital Euro COM(2023) 369 final.

⁵⁹ Article 9d Proposal for a Regulation of the European Parliament and of the Council on the Establishment of the Digital Euro COM(2023) 369 final; Commission Staff Working Document, Impact Assessment Report Accompanying the Document Proposal for a Regulation of the European Parliament and of the Council on the Establishment of the Digital Euro SWD(2023) 233 final, 35.

⁶⁰ Christos V Gortsos, 'Towards a Central Bank Digital Currency (CBDC) for the Euro Area: A Primer on the European Commission's Proposal for a Regulation of the EU Co-Legislators "On the Establishment of the Digital Euro"' (EBI Working Paper Series No 170, 2024), 39.

1. CONTRACTUAL FREEDOM AS A GENERAL PRINCIPLE IN EU LAW

Contractual freedom is a foundational principle of private law and a fundamental right protected under EU law. Article 16 of the Charter of Fundamental Rights of the European Union (CFREU) guarantees the freedom to conduct a business, which the Court of Justice has consistently interpreted as including the freedom of contract.⁶¹ More specifically, it covers the freedom to determine the content of contracts, to choose one's contractual partners, and to agree on the terms by which contractual obligations are performed and settled.⁶² This freedom is not absolute. Any limitation, however, must be provided for by law, respect the essence of the freedom, and, in line with the principle of proportionality, be necessary and genuinely pursue an objective of general interest.⁶³

The mandatory acceptance of the digital euro constitutes a direct restriction on the freedom of contract. A creditor cannot refuse the digital euro and is therefore unable to choose the means of payment used to perform the contract, which limits their contractual freedom.⁶⁴ That restriction is not, as such, incompatible with the Charter. The Court of Justice already confirmed in *Hessischer Rundfunk* that the legal tender status of euro banknotes and coins generates an obligation of acceptance, and that limitation has long been recognised as lawful.⁶⁵ The Commission's proposal extends the same logic to the digital euro, grounded in the objective of ensuring public access to central bank money in digital form and maintaining the effectiveness of the euro as a single currency.⁶⁶ This constitutes a legitimate aim within the meaning of Article 52(1) of the Charter.

The digital euro, however, introduces a complication that cash never raised. Unlike cash, the mandatory acceptance of the digital euro imposes not just a legal obligation but also an infrastructural one. A payee cannot comply with the obligation without holding a digital euro

⁶¹ Explanations Relating to the Charter of Fundamental Rights' [2007] OJ C303/17, 23; Case 151/78 *Sukkerfabriken Nykøbing* [1979] ECR I, para 20.

⁶² Case C-283/11 *Sky Österreich GmbH v Österreichischer Rundfunk* [2013], para 42-43.

⁶³ Article 52(1) CFREU.

⁶⁴ Maria Katsioti and Kosmas Karanikolas, 'The Digital Euro: Navigating the New Digital Currency Landscape' (*Lexology*, 10 April 2024), 2-3.

⁶⁵ Joined Cases C-422/19 and C-423/19 *Johannes Dietrich and Norbert Häring v Hessischer Rundfunk* ECLI:EU:C:2021:63 [2021] para 67.

⁶⁶ Recital 5 Proposal for a Regulation of the European Parliament and of the Council on the Establishment of the Digital Euro COM(2023) 369 final.

payment account, a functional device, and – for online payments – internet connectivity.⁶⁷ That is where the digital euro parts from cash, and where proportionality becomes the relevant question. Whether the obligation goes further than necessary to achieve its objectives is examined in the following section.

2. THE PROPORTIONALITY TEST

The mandatory acceptance obligation is subject to the proportionality requirement under Article 52(1) CFREU. The obligation is proportionate only if it goes no further than necessary and does not cause disadvantages disproportionate to the aims pursued.⁶⁸

The necessity test requires that where several equally effective measures exist, the least restrictive must be chosen.⁶⁹ The Commission asserts in its proposal that the legal tender status is necessary to ensure that the euro remains a single currency in a digitalised economy.⁷⁰ However, this assertion is not supported by any evaluation of alternatives. No consideration is given to a graduated implementation that would allow payment service providers and payees to adapt progressively. Yet that approach has direct precedent in Regulation (EU) 2024/886 on instant credit transfers, which staggered compliance deadlines by transaction type, institution type and Member State.⁷¹ The Commission's proposal on the digital euro does not consider whether the same model could apply, nor does it explain why it could not.

Even if the obligation were necessary, it would still need to be appropriate to its aims and not impose excessive burdens on payees.⁷² The aims are to ensure public access to central bank money in digital form and preserve the effectiveness of the euro as a single currency in a digitalised economy.⁷³ To comply, payees would be required to pay transaction fees and the

⁶⁷ Finance Watch, 'The Digital Euro: A Matter of Trust – Recommendations for Europe's New Digital Currency' (Finance Watch, October 2023), 13 and 15.

⁶⁸ Case C-283/11 *Sky Österreich GmbH v Österreichischer Rundfunk* [2013], para 50.

⁶⁹ Case C-331/88 *The Queen v Minister of Agriculture, Fisheries and Food and Secretary of State for Health, ex parte: Fedesa and others* [1990], para 13; Case C-58/08 *Vodafone Ltd v Secretary of State for Business* [2010], para 51.

⁷⁰ Recital 84 Proposal for a Regulation of the European Parliament and of the Council on the Establishment of the Digital Euro COM(2023) 369 final.

⁷¹ Regulation (EU) 2024/886 of the European Parliament and of the Council of 13 March 2024 amending Regulations (EU) No 260/2012 and (EU) 2021/1230 and Directives 98/26/EC and (EU) 2015/2366 as regards instant credit transfers in euro [2024] OJ L886/1, 10-11.

⁷² Case C-283/11 *Sky Österreich GmbH v Österreichischer Rundfunk* [2013], para 50.

⁷³ Recital 5 Proposal for a Regulation of the European Parliament and of the Council on the Establishment of the Digital Euro COM(2023) 369 final.

annual maintenance and licensing costs of their point-of-sale terminals.⁷⁴ However, that infrastructure burden is not shared equally. Large operators can absorb the compliance costs. For smaller payees, particularly those in regions where digital infrastructure is less developed, the burden is heavier. This was not unforeseen. The Commission's own Impact Assessment acknowledged that if new physical infrastructure could not be avoided, broader exemptions for certain categories of merchants would be warranted.⁷⁵ Yet that acknowledgment did not carry through to the proposal. The exceptions in the proposal define when acceptance may be refused, not the cost of acceptance where the obligation applies. There is no infrastructure support, no graduated implementation, and no mechanism for payees to demonstrate that compliance would be disproportionately costly in their specific circumstances. An obligation that distributes its costs unevenly, without any remedy, is difficult to reconcile with the requirements of proportionality.

The mandatory acceptance obligation may ultimately be justifiable. But as currently drafted, the proposal does not make that case. It asserts necessity without demonstrating it, and it addresses the infrastructure burden through a narrow exception regime rather than confronting it as a proportionality concern.

3. MANDATORY RULE OR DEFAULT RULE?

A fundamental drafting weakness in the proposal is the ambiguity surrounding the legal character of the mandatory acceptance obligation. The proposal never expressly states whether this obligation is a mandatory rule or a default rule. The word "mandatory" in Article 7(2) suggests the former, but the exception in Article 9(d), which expressly permits derogation by mutual consent, suggests the latter. Those two provisions clearly pull in opposite directions.

The distinction is not merely semantic. If the obligation is a mandatory rule, a contractual exclusion of the digital euro is void and unenforceable outside the exceptions the proposal expressly provides. If, on the other hand, the obligation is a default rule, parties can

⁷⁴ Commission Staff Working Document, Impact Assessment Report Accompanying the Document Proposal for a Regulation of the European Parliament and of the Council on the Establishment of the Digital Euro SWD(2023) 233 final, 130.

⁷⁵ Commission Staff Working Document, Impact Assessment Report Accompanying the Document Proposal for a Regulation of the European Parliament and of the Council on the Establishment of the Digital Euro SWD(2023) 233 final, 88.

freely replace the digital euro with any other agreed means of payment.⁷⁶ This would deprive the word “mandatory” of its legal effect. The consequences for enforceability, remedies, and the allocation of the burden of justification depend entirely on which reading applies.

The preparatory work of the proposal sheds some light on the question. The impact assessment accompanying the proposal characterises the acceptance obligation as a default rule on more than one occasion. Its glossary defines legal tender as a means of payment whose acceptance is mandatory by default, unless acceptance is restricted on public interest grounds or waived by contractual agreement.⁷⁷ The same document refers in its substantive analysis to a “default obligation of the payee to accept payments in digital euro”.⁷⁸ Yet neither formulation finds its way into the operative text of the proposal. If the Commission intended a default rule, that intention was not carried through into the proposed regulation.

A comparison with the existing cash regime confirms that the ambiguity is not resolved by the proposal's structure either. *Hessischer Rundfunk* establishes that cash acceptance is a default rule, giving parties the freedom to agree on an alternative means of payment.⁷⁹ The Commission’s parallel proposal on the legal tender of euro banknotes and coins codifies this approach in Article 5(1)(b), which recognises prior agreement between payer and payee as an exception to the mandatory acceptance obligation for cash.⁸⁰ The proposal on the digital euro appears to replicate the same exception in Article 9(d), providing that the payee is not required to accept digital euro where both parties have agreed on an alternative means of payment.⁸¹ However, that exception is subject to Article 10, which narrows the exception considerably. Payees are prohibited from relying on contractual terms that have not been individually

⁷⁶ Qi Zhou, 'Harmonisation of European Contract Law: Default and Mandatory Rules' in Larry A DiMatteo, Qi Zhou, Severine Saintier and Keith Rowley (eds), *Commercial Contract Law: Transatlantic Perspectives* (Cambridge University Press 2013), 505, 506-507.

⁷⁷ Commission Staff Working Document, Impact Assessment Report Accompanying the Document Proposal for a Regulation of the European Parliament and of the Council on the Establishment of the Digital Euro SWD(2023) 233 final, 4.

⁷⁸ Commission Staff Working Document, Impact Assessment Report Accompanying the Document Proposal for a Regulation of the European Parliament and of the Council on the Establishment of the Digital Euro SWD(2023) 233 final, 34.

⁷⁹ CJEU, Joined Cases C-422/19 and C-423/19 *Johannes Dietrich and Norbert Häring v Hessischer Rundfunk* ECLI:EU:C:2021:63 (26 January 2021) para 8.

⁸⁰ Article 5(1)(b) Proposal for a Regulation of the European Parliament and of the Council on the legal tender of euro banknotes and coins COM(2023) 364 final.

⁸¹ Article 9(d) Proposal for a Regulation of the European Parliament and of the Council on the Establishment of the Digital Euro COM(2023) 369 final.

negotiated.⁸² A term is treated as not individually negotiated where it has been drafted in advance and the payer had no opportunity to influence its substance.⁸³ Standard form contracts, the most common instrument to govern commercial payment arrangements, are therefore excluded as a basis for derogation. The practical scope for party autonomy is thus significantly narrower than under the cash regime. Where derogation requires genuine bilateral negotiations in every transaction, the obligation functions less like a default rule and more like a mandatory rule with a narrow exception.

Ultimately, the ambiguity is structural and unresolved. The preparatory work points toward a default rule, the operative text toward a mandatory one, and the exception regime in Articles 9 and 10 sits uneasily between the two.

4. THE TREATMENT OF EXISTING CONTRACTS

A related problem concerns the treatment of existing contracts. The mandatory acceptance obligation would apply from the date of the entry into force of the regulation. New contracts concluded after that date raise no difficulty: both parties will contract with full knowledge of the obligation. The real difficulty lies with contracts that are already in force, concluded at a time when no such obligation existed.

EU law distinguishes between genuine retroactivity, where new legislation applies to situations that have become definitive, and immediate application, where new legislation applies to the future effects of ongoing situations.⁸⁴ The latter is generally permissible, the former is not unless overriding public interest justifies it and legitimate expectations are respected.⁸⁵ The proposal on the digital euro engages neither of those frameworks. It contains no transitional provisions and no guidance on whether the obligation applies immediately to contracts already in force.

⁸² Article 10 Proposal for a Regulation of the European Parliament and of the Council on the Establishment of the Digital Euro COM(2023) 369 final.

⁸³ Christos V Gortsos, 'Towards a Central Bank Digital Currency (CBDC) for the Euro Area: A Primer on the European Commission's Proposal for a Regulation of the EU Co-Legislators "On the Establishment of the Digital Euro"' (EBI Working Paper Series No 170, 2024), 39.

⁸⁴ Leigh Hancher, Kim Talus and Moritz Wüstenberg, 'Retrospective Application of Legal Rules in the European Union: Recent Practice in the Energy Sector' (2021) 39 *Journal of Energy and Natural Resources Law* 65, 67-68.

⁸⁵ Case C-331/88 *The Queen v Minister of Agriculture, Fisheries and Food and Secretary of State for Health, ex parte: Fedesa and others* [1990], para 45.

Consider first contracts already in force that designate an alternative means of payment. On a plain reading of Article 9(d), such contracts appear to fall within the exception. Article 10, however, requires that any derogating agreement be individually negotiated.⁸⁶ Payment clauses in standard form commercial contracts are typically not. Those contracts therefore fall outside the exception, yet the proposal provides no guidance on their fate. It is silent on whether the mandatory acceptance obligation overrides the existing clause, suspends it, or triggers an obligation to renegotiate.

Contracts that make no reference to means of payment raise a different but equally unaddressed question. The mandatory acceptance obligation presumably applies to them by default, but the proposal does not confirm this. Parties to long-term contracts concluded before the regulation enters into force had no reason to anticipate the obligation. Imposing it without transitional provisions is difficult to reconcile with the principle of legitimate expectations as a general principle of EU law.⁸⁷

These questions do not appear to have been identified or examined in the existing academic literature on the digital euro. Yet they are of considerable practical importance given the number of commercial contracts already in force that will be subject to the mandatory acceptance regime upon the digital euro's introduction.

SECTION IV: RECOMMENDATIONS

The critical assessment in Section III identifies three structural weaknesses in the Commission's proposal: the ambiguity surrounding the legal character of the obligation, the failure to address the treatment of existing contracts, and a disproportionate implementation burden on smaller payees. Each can be remedied without departing from the proposal's underlying objectives.

1. CLARIFICATION OF DEFAULT RULE IN LINE WITH CASH REGIME

The proposal does not resolve whether the mandatory acceptance obligation is a mandatory norm or a default rule. Article 7(2), which establishes obligation, and Article 9(d),

⁸⁶ Christos V Gortsos, "The European Commission's Proposal for an EU Regulation "On the Establishment of the Digital Euro"" (2026) Accounting, Economics, and Law (advance online publication), 19.

⁸⁷ Case C-322/16 *Global Starnet Ltd v Ministero dell'Economia e delle Finanze and Amministrazione Autonoma Monopoli di Stato* [2017], para 65.

which permits derogation by agreement, point in opposite directions. The ambiguity should be resolved in favour of a default rule, for two reasons. The Commission's impact assessment expressly characterises the obligation as such, and the proposal is designed to replicate the cash regime, under which acceptance is a default obligation. The exception in Article 9(d) already reflects that default character, permitting parties to agree on an alternative means of payment. What undermines that default character is the individual negotiation requirement in Article 10, which should therefore be removed. It finds no equivalent in the cash regime and renders the exception in Article 9(d) so narrow that the obligation effectively functions as a mandatory norm, directly contradicting the Commission's stated intention.

2. PROTECTION OF EXISTING CONTRACTS

The proposal contains no transitional provisions and no guidance on whether the mandatory acceptance obligation applies to contracts already in force. Immediate application of the obligation to existing contracts creates tension with the principle of legitimate expectations. The proposal should therefore include an express provision establishing that the obligation applies only to contracts concluded after the date of the regulation's entry into force. The Commission may nonetheless prefer immediate application, on the basis that limiting the obligation to new contracts would significantly delay the digital euro's uptake and undermine the effectiveness of the mandatory acceptance regime. That choice remains open to the Commission, but only if accompanied by a transitional mechanism. A grandfathering clause should exempt existing contracts from the mandatory acceptance regime for a defined period. This gives the parties, who could not have anticipated the obligation, sufficient time to adapt their payment arrangements before the obligation becomes binding.

3. SOLUTION TO THE PROPORTIONALITY PROBLEM

The proportionality deficit identified in Section III has two dimensions: the absence of a graduated implementation regime and the unequal distribution of the infrastructure burden. Each requires a distinct remedy.

The mandatory acceptance obligation should not apply uniformly from the date of entry into force. A graduated implementation should introduce staggered compliance deadlines differentiated by transaction type and the sophistication of the parties involved. The obligation should apply first to large merchants and online transactions, where the infrastructure burden

is lower. Smaller merchants and in-person transactions requiring investment in new infrastructure should benefit from an extended compliance period. This approach is modelled on Regulation (EU) 2024/886 on instant credit transfers, which demonstrated that phased implementation is both legislatively workable and effective in reducing the burden on smaller market participants.

A graduated rollout addresses the timing of the obligation but not the cost of compliance for those who need to invest in new infrastructure. Where existing point-of-sale terminals cannot be used and new equipment is required, the burden falls disproportionately on smaller payees. The Commission's own Impact Assessment recognised that broader exceptions would be warranted in precisely that scenario. The proposal should be amended to reflect that recognition. Where compliance requires investment in infrastructure, the Commission should provide either direct financial support to affected payees or broader exceptions for smaller merchants who cannot absorb the cost.

CONCLUSION

The digital euro represents a significant moment in the evolution of the euro as a currency. For the first time, legal tender status would be extended to a digital form of central bank money, with the aim of preserving public access to central bank money and the effectiveness of the euro as a single currency in a digitalised economy. Conferring legal tender status on the digital euro necessarily entails a mandatory acceptance obligation, as the Court of Justice established in *Hessischer Rundfunk* in the context of euro banknotes and coins. The Commission's proposal on the digital euro therefore rests on solid legal foundations, pursuing legitimate aims and building on established case law.

That foundation, however, has not yet been translated into legal regime of equal precision. The mandatory acceptance regime, as currently drafted, is structurally ambiguous in three respects. First, the proposal does not resolve whether the obligation is a mandatory norm or a default rule. Article 7(2) imposes the obligation in mandatory terms, while Article 9(d) permits derogation by agreement between the parties. Article 10 then narrows that derogation by requiring individual negotiation, excluding standard form contracts and rendering the exception so narrow that the obligation effectively functions as a mandatory norm in practice. Second, the proposal does not address the treatment of contracts already in force, providing no transitional provisions and no indication of whether the obligation applies immediately or prospectively. The legal position of such contracts, whether they designate an alternative means of payment or stay silent on the matter, is left entirely unresolved. This drafting weakness is difficult to reconcile with the principle of legitimate expectations, and it is a gap the existing academic literature has not addressed. Third, the infrastructure burden imposed by the mandatory acceptance obligation is not distributed equally. Where new infrastructure is required, the cost falls disproportionately on smaller payees, who cannot absorb it as larger operators can. Yet the proposal addresses that burden through a narrow exception regime rather than through targeted relief.

These gaps are remediable, but they are not trivial. Each bears directly on the legal certainty, proportionality, and contractual freedom that EU law demands of any measure engaging fundamental rights. The recommendations in Section IV are targeted and technically achievable, and all remain within the Commission's existing legislative framework. They do not require the Commission to abandon its objectives. They require it to pursue them with

greater precision. The first recommendation is to clarify the default character of the acceptance obligation and remove the individual negotiation requirement. The second is to protect existing contracts by limiting the obligation to contracts concluded after the regulation enters into force. The third is to address the proportionality deficit by introducing a graduated implementation and targeted infrastructure support for smaller payees.

This paper has been limited to a legal analysis of the legal tender status of the digital euro. The broader question of market effects falls outside its scope. It is nonetheless worth noting that legal tender status is a legislative privilege. It grants one payment instrument a right of discharge that private means of payment cannot replicate, regardless of their technical quality or commercial terms.⁸⁸ Whether that privilege distorts competition in the payments market is a question that deserves separate and sustained attention. The market concern is real, but it flows from something more fundamental. Legal tender is, at its core, a legislative instrument. It is not a market outcome or a technological inevitability. It is a decision taken by public authority to designate a particular instrument as the definitive means of discharging monetary obligations. That decision carries legal consequences for every party to every contract denominated in euro. It deserves legislation that is equal to its ambition.

⁸⁸ Mikolai Gütschow and Bernd Lucke, 'The Proposed Design of the Digital Euro: A Critical Analysis' (2026) 8 Digital Finance 7, 18.

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