

Brussels,
xxx

Report of the Euro Legal Tender Expert Group (ELTEG)
on the definition, scope and effects of legal tender of euro banknotes and coins

Report of the Euro Legal Tender Expert Group (ELTEG)

on the definition, scope and effects of legal tender of euro banknotes and coins

1. BACKGROUND

The legal tender status of euro banknotes - is laid down by Article 128¹ of the Treaty on the Functioning of the European Union (Treaty). Following that, Council Regulation no 974/98 of 3 May 1998 on the introduction of the euro² was adopted. As the ECB Decision 2001/15 of 6 December 2001 on the issue of euro banknotes states “*Euro banknotes are expressions of the same and single currency, and subject to a single legal regime.*”

In spite of the existing legal framework, according to the majority of the Group members, there is currently some legal uncertainty at the euro area level with regards to a common interpretation and definition of legal tender and the consequences flowing there from: according to the same majority, the EU has the exclusive competence to regulate this matter but has not yet done so. A minority of the Group members is of the opinion that the Community has made use of its competence to define what legal tender is in a sufficient way (i.e. banknotes and coins) and further effects of legal tender are governed by national law.

Member States have very different national legislative provisions regarding the extent and use of legal tender. Moreover, the exclusive competence attributed by the Treaty to the Governing Council of the ECB to authorise the issuance of euro banknotes bears a strong relation to the notion of legal tender and should be taken into account.

¹ Article 128 (ex Article 106 EC Treaty): "1. The European Central Bank shall have the exclusive right to authorise the issue of banknotes within the Union. The European Central Bank and the national central banks may issue such notes. The banknotes issued by the European Central Bank and the national central banks shall be the only such notes to have the status of legal tender within the Union.

2. Member States may issue coins subject to approval by the European Central Bank of the volume of the issue. The Council on a proposal from the Commission and after consulting the European Parliament and the European Central Bank may adopt measures to harmonise the denominations and technical specifications of all coins intended for circulation to the extent necessary to permit their smooth circulation within the Union."

² Article 10: "As from 1 January 2002, the ECB and the central banks of the participating Member States shall put into circulation banknotes denominated in euro. Without prejudice to Article 15 [the one on the dual circulation period], these banknotes denominated in euro shall be the only banknotes which have the status of legal tender in all these Member States". Article 11: "As from 1 January 2002, the participating Member States shall issue coins denominated in euro or in cent and complying with the denominations and technical specifications which the Council may lay down in accordance with the second sentence of Article 105a(2) of the Treaty. Without prejudice to Article 15, these coins shall be the only coins which have legal tender in all these Member States. Except for the issuing authorities and for those persons specifically designated by the national legislation of the issuing Member States, no party shall be obliged to accept more than 50 coins in any single payment.

The concrete issues addressed by ELTEG are varied and refer to the extent of the concept of legal tender, acceptance of high denomination banknotes, validity of surcharges, acceptance of stained banknotes, the protection of banknotes as regards IPR and the protection of legal tender banknotes and coins from destruction and mutilation.

The European Commission services and the ECB services firmly believe that having a single currency as legal tender across various Member States is not satisfactory without a common understanding of what this legal tender means and how it must be protected. Hence, and with a view to ensuring a consistent and fully coordinated approach, a working group co-chaired by the abovementioned institutions, gathering representatives from the euro area economic and finance Ministries and National Central Banks (as a general rule, 1 for each institution for each country, with Observers from the Mint Directors' Working Group) was set up at the beginning of 2009. The first meeting took place in Brussels on 21st January 2009.

This working group met on a monthly basis, alternating between Brussels and Frankfurt. Its mission has been dual: first, to gather all the different national interpretations of the concept of legal tender and the possible existing court decisions; secondly, to analyze the issues and try to agree on a common definition and interpretation.

2. ISSUES ADDRESSED BY ELTEG

2.1. General Issues

2.1.1. Definition of the concept of legal tender

The discussions held within the Group related to several aspects of the concept of legal tender: the nature of the norm that confers the attribute of legal tender, a common definition of legal tender and the process through which the attribute of legal tender is acquired and/or lost. The discussions were aimed at reaching an agreement on a common concept. However, with regards to some issues treated in the report, more than one alternative is provided. This is due to the fact that the Group could not reach consensus – and that it viewed itself as a mere group of experts, without the mandate to forge quasi legislative compromises.

(a) The legal basis for the attribution of legal tender

Legal tender is attributed by law –Union law in the case of the euro- as an act of sovereignty. It is public law (monetary law) but not public order law.

(b) Common definition of legal tender

From the background information collected by ELTEG on the national legal frameworks as well as from the discussions held within the Group, it appears clear that all Union and national legislations specify that euro banknotes and coins are legal tender but elements of the definition of this concept are rarely given. The reason for this is that the concept of legal tender is a "generally accepted" concept in national law. Although the majority of the Group agreed that the adoption of the euro had changed the picture, there was no clear majority to consider that the absence of a common definition of legal tender was problematic *per se*, in view of the differences in the legal and consumer traditions across Member States. In-depth

analyses of such differences as well as a search for common lines of interpretation in the euro area were deemed useful by the Group.

The concept of legal tender encounters that of contractual freedom and the issue is to ascertain which of the two prevails in any given circumstance. In all Member States, the status of legal tender granted to euro banknotes and coins (hereafter referred to as "cash" in this paper) means that cash is a valid means of payment to settle a monetary debt unless the parties have agreed on other means of payment. However, the details and legal consequences involved vary considerably across countries.

Another question that was brought up referred to the extension by a Member State of legal tender to other means of payment than euro banknotes and coins. NL is the only country where the notion of legal tender might give the impression that it is not restricted to cash only. The Dutch Civil Code was explained by the Dutch representative as stating that "payment through the banking system is a valid means of discharge of a monetary debt unless the creditor has validly excluded the payment on a bank account". Nevertheless, it was agreed on the Union level that although bank transfers were a perfectly valid means of payment to settle a monetary debt (i.e. have '*pouvoir libératoire*'), their acceptance has not been made universally mandatory so that they cannot benefit from legal tender status³.

Looking for a common definition of legal tender of euro cash, the Group expressed unanimous support for a definition relying on three main criteria, seen as cumulative, in cases where a payment obligation exists:

- **Mandatory acceptance of euro cash;** a means of payment with legal tender status cannot be refused by the creditor of a payment obligation, unless the parties have agreed on other means of payment
- **Acceptance at full face value;** the monetary value of a means of payment with legal tender status is equal to the amount indicated on the means of payment
- **Power to discharge from payment obligations;** a debtor can discharge himself from a payment obligation by transferring a means of payment with legal tender status to the creditor

(c) Acquisition /loss of the attribute of legal tender

ELTEG members agreed upon the proposition that the legal tender attribute was acquired when banknotes or coins had been issued. For the purposes of acquiring legal tender, a large majority of the members agreed that notes and coins were issued when they had entered into the liability side of the balance sheet of an issuing authority (the ECB, an NCB or national

³ Cf. Judgment No. 6291 of 10th March 2008 of Section III of the Italian Court of Cassation, refusing legal tender status to certified cheques.

treasury), and had been put into circulation by/in the name of the issuer⁴. Issuance thus has to be distinguished from the simple putting into circulation:

- putting into circulation is a purely operational and physical activity and can be delegated to an agent;
- issuance as a whole, including both putting into circulation and entering into the balance sheet of the issuing authority, is an act of public authority and cannot be outsourced;

An obvious example of the difference between issuance and putting in circulation is the issuance of euro coins which are distributed and put in circulation by the NCBs on behalf of the Treasuries which are the issuers; the coins need to be paid to the Treasuries and are treated as a liability in the latter's books. Putting into circulation can be entrusted to an agent, which is what the Eurosystem already does in Asia with its Extended Custody Inventory (whereby putting into circulation of euro banknotes is delegated to commercial banks that have signed a specific agreement). Moreover in euro area Member States where National Central Banks lack an extensive branch of regional networks or where Notes-held-to order schemes are in place, National Central Banks have partially delegated the function of putting into circulation to private stakeholders. Finally, according to the ECB Decision of 6 December 2001⁵, the ECB and NCB issue banknotes and put them into circulation (in the case of the ECB via NCBs acting as agents).

The loss of the attribute of legal tender comes from a Governing Council Decision⁶ in the case of a series of euro banknotes and by taking banknotes out of circulation⁷ or totally destroying⁸ them when it comes to individual banknotes⁹. The same can be said for coins: taken individually, the attribute of legal tender is lost when they are taken out of circulation or when they are totally destroyed. Concerning a series of coins, they lose legal tender by means of a Council Regulation.

2.1.2. Acceptance/refusal of cash

In several meetings, the Group has addressed the issue of refusal of cash payments. The majority felt that Business to Consumer (B to C) relationships had to be differentiated from Business to Business relationship (B to B) where the parties are deemed to have an equivalent negotiation power and where a customary default rule might be considered to exist. Indeed, in B to B relationships, there was broad agreement that contractual freedom in principle tends to

⁴ If banknotes are put into circulation illegally, the application of the principles on acquisition of legal tender shall take into account the situation of bearers in good faith of such banknotes.

⁵ OJ L 337/52 (ECB/2001/15)

⁶ Decision of the ECB of 20 March 2003 on the denominations, specifications, reproduction, exchange and withdrawal of euro banknotes (ECB/2003/4) OJ L 78, 25.3.2003, p. 16

⁷ The banknotes are then removed from the balance sheet of the issuing authority.

⁸ The issue of unauthorised destruction of banknotes and coins has been discussed separately (v. 2.1.3).

⁹ The loss of legal tender should be distinguished from the reimbursement rules. A series of notes can lose legal tender but still be exchangeable at NCBs counters. For the legacy currencies, the reimbursement rules are defined by the national competent authorities. In some Member States the duration for the reimbursement of legacy currencies is unlimited, in others it is limited in time. For euro banknotes series, the reimbursement rules are defined by a Governing Council decision.

prevail i.e. that parties are free to agree on other means of payment. In B to C relationships, from the Commission services' and the ECB services' perspective, the very concept of legal tender means that if a customer insists on paying in cash when concluding a contract, i.e. the retailer and the consumer do not agree on any other means of payment, then cash should not be refused, unless the retailer can bring forward restrictively defined objective reasons to do so. In the absence of such objective reasons, the retailer's refusal would be legally irrelevant. BE supported this point of view while considering that it was not only linked to the concept of legal tender but also to aspects of consumer's protection policy. According to the BE representative, this was the reason why the applicable rules may be different in the B to B relationships. Four ELTEG members (DE, FI, NL, IE) do not share this point of view. According to these members, the legal tender provisions refer to the fulfillment of an essential part of a contract already concluded and do not amount to an obligation to conclude a contract allowing for cash payments.

At a first stage discussion, the Chair suggested four sets of objective reasons, all linked to the physical nature of cash (which, contrary to electronic means of payments, has to be transported and stored safely), according to which a retailer might validly refuse a cash payment. These reasons were the following: the security of people and of the business was at stake; the per unit value of the goods sold was so high that the retailer could face serious security/practical problems if all items were paid for in cash (e.g. car dealers); the shop was located in a remote area and there was no bank nearby allowing the retailer to deposit cash regularly; and, the purchase took place without any physical contact between the two parties to the contract (e.g. remote sales)¹⁰.

It was not possible to reach an agreement on the issue because of the two different schools of thought described above: according to one school, contractual freedom can limit the public law provisions of legal tender, whereas according to the other one, contractual freedom cannot prevail over the public law principle of legal tender.

Given the existing diverging views among members on the issue, members of ELTEG were, in a second stage discussion, invited to consider a possible distinction between a temporary refusal of cash (i.e. no change available etc.) and a prolonged refusal of cash (window sign indicating permanent or prolonged non acceptance): the first case would simply rely on the principle of 'good faith', while guiding principles would be defined to govern the latter. FR proposed the introduction of the "faire l'appoint"¹¹ system, as a compromise solution between the protection of the shopkeeper's security and the protection of the legal tender of cash.

After a 'tour de table', a clear majority of Group members were in favour of the principle of general acceptance of cash in B to C relationship, the refusal being the exception and always based on reasons related to the "good faith" principle¹². members from four Member States however argued that contractual freedom can limit legal tender provisions (IE, DE, FI, NL).

¹⁰ In this respect, DE referred to non-acceptance of cash for taxes or fees by some Member States themselves, arguing that there might be valid reasons to treat market participants similarly in those cases.

¹¹ According to this principle, the retailer can request the customer to pay the exact amount owed so that he/she does not have to give any change back.

¹² In this respect, the French law principle of "obligation de faire l'appoint" is considered as a manifestation of the "good faith" principle. Indeed in cases where the customer pays the exact amount owed, the retailer can *a contrario* not refuse the payment in cash.

2.1.3. *Validity of Cash Surcharges*

According to the tables received from the participants, surcharging cash would be considered illegal in a number of Member States, because contrary to legal tender, while in some Member States cash surcharges are not prohibited (DE, SI, MT, FI, IE, NL). By virtue of the new Directive on payment services ("PSD"), discounts (and not only surcharges) can apply to electronic payments which would imply that paying in cash could be made more expensive than paying with electronic means.

Cash is clearly excluded from the scope of the PSD. The purpose of the discussions held in the ELTEG, which were focused on cash exclusively, was therefore not to interpret some provisions of the PSD but rather to come to a clear and common understanding of the relationship between article 52.3 of the PSD and the notion of legal tender notes and coins¹³.

For the majority of Group members the interactions between the transposition of the PSD and the legal tender of euro banknotes and coins must be seen in light of the Group's findings on the definition of the Treaty notion of legal tender (i.e. acceptance "*at full value*"). A minority of Group members considered that the imposition of cash surcharges was legally permissible and did not necessarily conflict with the legal tender status of currency. This is because the provisions on legal tender only concern the payment of a debt under a contract; they have no bearing on the formation of the contract, whereby all material terms (including the price, with the possibility of a surcharge for a cash payment) are agreed. One Member (SI) suggested that, if one wanted to efficiently prohibit a surcharge on cash payments, one should do so by regulating on the proper means of payment.

Linked to the issue of surcharges on cash payments, PT considered that payment service providers should not be allowed to impose any surcharges, in whatever form (fees, commissions, etc.), in relation to deposits in cash made by or to the benefit of their clients on grounds of the costs associated with cash handling. Such surcharges, although not directly linked to payments, would be detrimental to the use of legal tender as they would in particular impinge indirectly on the discharge of payment obligations by means of cash.

As a result of the discussion, the majority of Group members felt that:

- **no surcharges (either express or by measures of equivalent effect on all other available means of payment) can be imposed on payment through the use of the legal tender currency, euro banknotes and coins¹⁴; and**
- **Surcharges can be imposed on other means of payment, the mere existence of pouvoir libératoire not attributing to them the quality of legal tender.**

Member from five Member States (IE, DE, FI, NL, SI) considered that the imposition of cash surcharges was legally permissible and did not necessarily conflict with the legal tender status of currency.

¹³ Art 52.3: "The payment service provider shall not prevent the payee from requesting from the payer a charge or from offering him a reduction for the use of a given payment instrument. However, Member States may forbid or limit the right to request charges taking into account the need to encourage competition and promote the use of efficient payment instruments.

¹⁴ This means that, in full accordance with article 52.3 of the PSD, a retailer could offer a discount on a given means of payment that he/she considers being the most cost effective and not on cash payments but he/she could not adopt discriminatory measures against cash only.

2.1.4. Mutilation/destruction of banknotes /coins for artistic purposes

During the discussions held within the Group, the Chair proposed to differentiate between three different cases: total destruction of a banknote/coin, deliberate alteration of a banknote/coin and mutilation for artistic purposes.

It was suggested that total destruction should not be prohibited as it only had consequences for the holder of the banknote/coin.

Deliberate partial destruction/mutilation should be prohibited as the mutilated bank note/coin could be brought back into circulation and have an impact on third parties.

Mutilation for artistic purposes should benefit from a general exemption; however, it was stressed that, in such cases, intentionally mutilated euro banknotes should not be exchanged.

For a few Member States (DE, FI, NL), there is no need to distinguish between the three cases as the holder of the note or of the coin is the owner and can do whatever he wants with his property. FR could join this first group, (i.e. consider the distinction was not useful because of the rights of ownership) but only if there were no intention to punish the destruction or the mutilation of banknotes and coins. In the event of introduction of penalty rules however, the distinction would be deemed necessary and, in such cases, FR could support the Chair's arguments about the different consequences of a deliberate mutilation, of a total destruction or of a mutilation for artistic purposes. In other countries on the contrary, the holder of a note/coin is not the owner. He only owns the underlying value but not the object itself (payment instrument) which is considered to be a public good and, as a consequence, the defacement/destruction of coins is penalised by the legislation.

Therefore, for the large majority of the members, the distinction between the three cases as described above was deemed useful. According to EL, an additional distinction should be made between privately destroying a note (which is not harmful) and doing so in public (which could be considered as an offence to the State/the Community).

The majority of the members also felt that the legal consequences of total destruction of notes/coins should be related to the quantities involved: all members but IE¹⁵ were in favour of not prohibiting/penalizing total destruction of small quantities of banknotes/coins, while a large majority of the members felt that destroying large quantities of bank notes/coins should be analysed on a case by case basis, except FR, AT, DE, FI, NL which consider that the legal treatment should be the same no matter the quantities destroyed. Moreover, in the case of total destruction of fit euro coins by the competent national authorities the majority of the members felt that the prior consultation with the competent EU body (ECSC/MDWG) would be necessary.

In the case of both partial and total destruction of banknotes and coins, NL DE, FI and AT stated that penalisation was not desirable. As far as destruction is concerned this view is supported by the current situation in which the holder of a banknote/coin is the owner and can do with it what it wants. With respect to deliberate mutilation, NL raised the question of proving intent here and FR asked for clarification of "deliberate mutilation". Some members

¹⁵ IE was in favour of not prohibiting/penalizing total destruction of small quantities of **bank notes** only – as total destruction of coins is already prohibited by national law.

asked for further clarification of the way in which the proportionality principle, would apply in the case of deliberate alteration of a banknote/coin. The Chair's point of view was that several aspects would have to be taken into consideration including the importance of the mutilation (a small sign made by a cashier when counting the banknotes would not be penalised) and also the intention behind the mutilation (an isolated act or a "political" initiative of a group of citizens, political or immoral sentences versus neutral ones or telephone numbers, etc.).

Concerning the response to deliberate mutilations (in addition to the non re-imburement) a large majority of the members were in favour of penalising deliberate mutilation of bank notes and coins, with the exception of FI, FR, DE, NL and AT. It was noted that in some countries (e.g. NL) the authorities have the possibility of court action on the basis of tort.

As regards mutilation or alteration for artistic purposes, a large majority of members were in favour of a general authorization. EL was rather in favour of an authorization procedure on a case-by-case basis. Also, for EL, a piece of art should not involve the mutilation of large quantities of coins – otherwise it should not be authorized. A large majority of the members were however in favour of a more liberal approach. While the defacement or alteration for artistic purposes was not to be encouraged, it should be tolerated. However ES said that it was important to make sure that the mutilated/altered notes/coins used by the artist would not be brought back into circulation. FR had reservations on the possibility of introducing a system of general authorization for artistic purposes as this would notably imply an understanding of what a piece of art was. It suggested, as a possible simplification of the situation, substituting the phrase "mutilation or alteration for other purposes" for "mutilation for artistic purposes".

No full consensus was reached on the issue but there was a broad agreement on the fact that total destruction of small quantities of legal tender notes and coins should not be prohibited while this should be the case for unauthorised destruction of large quantities. The majority of the Group also agreed that deliberate mutilation of notes and coins should be penalised, with the exception of mutilation or alteration for artistic purpose which should not be encouraged but should however be tolerated . The Eurosystem should however explicitly communicate that, in case where banknotes are altered for artistic purposes, they should not be put into circulation again, while it is clear, according to ECB rules, that they cannot be reimbursed. Lastly, there was a majority of members in favour of prohibiting deliberate alteration across the EU – to the extent such prohibition were possible - even if, for evidentiary reasons, no sanction could be imposed.

2.2. Issues related to legal tender of euro banknotes

2.2.1. *High Denomination banknotes*

ELTEG members were first invited to adopt a stable definition of high denomination euro banknotes for reasons of legal certainty. For the majority of the Group, high denomination banknotes corresponded to the EUR 200 and the EUR 500 notes. For NL & FI though, the EUR 100 note should also be considered as a high denomination banknote since it is not supplied in ATMs in the NL and hence does not circulate so often. For other members who

questioned the need for such definition, high denomination banknotes can only be defined on a case-by-case basis. ELTEG members were also invited to discuss the proportionality principle as regards the acceptance of high denomination banknotes, as a possible illustration of the 'good faith' principle. The principle would be that if the face value of the banknote were close to the amount owed to the retailer, then the high denomination banknote could not be refused. ELTEG members also considered the French law principle '*obligation de faire l'appoint*'. A distinction between a punctual and a prolonged refusal was also suggested by the Chair for high denomination banknotes. For a punctual refusal, one could advert to the principle of good faith (i.e. the proportionality principle). However a prolonged refusal of high denomination banknotes would not be possible unless justified by grounded reasons (e.g. security issues) and announced in advance through a clear and unambiguous sign in the retailer's premises.

In connection with this issue, PT noted that credit institutions should also be required to change, free of charge, high denomination for lower denominations banknotes of the same total value and, if justified, coins. Such operations might prevent unnecessary tensions in the B to C relationship in relation to payments with high denominations banknotes and as such improve the smooth discharge of pecuniary debts with cash.

It was finally agreed by the majority of the members that the principle of non-limitation of use of high denomination banknotes in the settlement of monetary debts -if not for "public reasons"-¹⁶ should be recalled. In particular, it should be clarified that, when the face value of the high denomination banknote was *close* to the amount owed by the customer, the banknote should *a priori* not be refused. The French system of "*obligation de faire l'appoint*" –although not fully identical to this "proportionality principle"- should also be seen as a legal principle allowing for the refusal of high denomination banknotes only on a case by case basis, general acceptance remaining as the rule. For the minority of members who adhere to the primacy of contractual freedom, on the contrary, high denomination banknotes can be refused by retailers. The ELTEG therefore reached the same divided conclusion for the refusal of high denomination banknotes as for the refusal of cash in general:

- **For a clear majority of members, high denomination banknotes should in principle be accepted. They can only be refused based on the 'good faith' principle and/or specific national rules (e.g. "*obligation de faire l'appoint*" in FR);**
- **For 4 members, the concept of legal tender does not affect the possibility –based on contractual freedom- of the parties agreeing that payments cannot be made with high denomination banknotes. In any event, the banknotes might also be rejected on the “good faith” principle.**

2.2.2. *Stained banknotes*

The ELTEG members discussed the legal tender status of banknotes that have been stained by anti-theft devices. In one EU country, namely SV, stained banknotes lose their legal tender

¹⁶ Recital 19 of Council Regulation (EC) No 974/98 of 3 May 1998; on the introduction of euro.

status. The loss of the legal tender status means that neither the bank nor the retailer can be forced to accept a stained banknote. This is important if one does not want to facilitate the use of stained banknotes by those who stole them. It is also important for the retail sector, which should not be forced to accept a banknote which may be retained by the Central Bank without compensation when it is ultimately surrendered. However, during the discussions, it was concluded that making the loss of legal tender dependent on staining would open the gate to an avalanche of other reasons for loss of legal tender – all legally uncertain.

The Group unanimously agreed on the fact that legal tender euro banknotes stained with security ink from anti-theft devices remain, until withdrawn by a Eurosystem decision, legal tender euro banknotes. All members also agreed on the fact that only the Eurosystem was competent *in fine* to ascertain whether these stained notes could be accepted for reimbursement or not and under what conditions (with the *caveat* that *in fine* was not meant to exclude judicial review).

Members were also asked to discuss whether to invite public authorities (Ministries of Finance *and* NCBs) in all euro area Member States to communicate or sponsor guidelines for the acceptance of stained banknotes for payments in shops. The Commission announced that it intends to include in its draft Regulation on CITs an obligation to bring back to the Central Bank any banknote stained by a neutralisation system.

Most members were in favour of inviting Government and Central Banks to communicate with the retail sector regarding stained banknotes (for instance, with leaflets with clear explanations and photos). The message should be that such banknotes should be brought to the Central Bank, on the grounds that there is a very high probability that they are the product of a theft. However, great care should be taken in order to enhance certainty and avoid confusion in preparing such a communication, which is a delicate exercise and should be undertaken in close cooperation with specialists in banknotes and coins issues.

2.2.3. *Patent protection of euro banknotes (IPR)*

During the Fifth meeting of the Group (Brussels, 3 June 2009), the ECB recalled it is currently involved in IPR litigations of particular sensitivity, as they potentially relate to security features in the present series of euro banknotes. It stressed that it conducted IPR due diligence searches prior to using any security feature and was thus confident that no third party IPR was thereby being infringed.

It also said that it was no secret that multi-jurisdictional IPR litigation in Europe was currently resources-intensive, extremely expensive, complicated¹⁷ and above all, as with all litigation, uncertain. Moreover, were the ECB to ever face an infringement action where infringement were established, the confidentiality of the security features of euro banknotes and the normal circulation of legal tender could be put in danger. Citizens' trust in cash as a means of payment could also suffer as a result.

¹⁷ Cf. http://eur-lex.europa.eu/LexUriServ/site/en/com/2007/com2007_0165en01.pdf

Based on the above, the ECB explained that one needs to ensure that legal tender euro banknotes (and coins) are protected from patent trolls as part of public security. Given the crucial importance legal tender banknotes and coins have for economic life, it might be of interest to harmonise the national rules concerning compulsory licensing of IPR related to banknotes and coins. The rules existing in US law regarding the licensing of IPR necessary to the US Government and its agencies could also serve as an example¹⁸.

The Commission's services stated that indeed, as regards IPR litigation in Europe today, in case of disputes on the validity, or of allegations of infringement, of a patent, proceedings concerning validity must be brought before the courts of the MS in which the patent has been registered while infringement proceedings may be brought alternatively before the courts of the MS of the defendant's domicile or before the courts of the MSs where the harmful event occurred or may occur. This entails multi-forum litigation (parties may have to litigate in parallel in all MS where the patent is validated).

In order to remedy the significant shortcomings of the above situation, the Council considered¹⁹ the conclusion of an agreement between the European Community, its MSs and other Contracting States of the EPC on the creation of a Unified Patent Litigation System. The court structure to be established in the framework of the Unified Patent Litigation System would have jurisdiction both for existing EPC patents and future Union patents. Decisions of the future court would have effect for the whole territory of the EU or where an EPC patent has taken effect. The unified court would have jurisdiction, inter alia, in respect of actions on compensation for compulsory licenses (pursuant to Article 21 of the draft Community patent Regulation). This would adequately address the ECB's concerns, at least with regards to avoidance of costly multi-forum litigation.

Commission's services provided additional information regarding the latest developments in this field²⁰. Following the receipt of additional background information, the Group considered that:

- it was a step forward that UPLS, once established, would effectively cater for the avoidance of multi-forum litigation in general, both for existing EPC patents and future Community patents;
- however, this did not address the issue of protection of legal tender euro banknotes (and coins) as part of public security;

¹⁸ The ECB has contacted, at the request of one member of the Group, the Fed and the BEP to find out how 28 USC 1498 has been used in case of USD Banknotes; the answer received was that, although no recent cases have been reported, “there is some evidence that 1498 provisions reduce the instances of patent infringement suits against the government”.

¹⁹ The Competitiveness Council of 28 and 29 May 2009 agreed in principle to request the ECJ pursuant to Article 300 (6) EC for an opinion on whether the envisaged Agreement, to be concluded between the Community, its Member States and other contracting parties to the European Patent Convention, is compatible with the EC Treaty.

²⁰ Council conclusions of 28 and 29 May 2009, Draft European patent Litigation Agreement; revised proposal for a Council Regulation on the Community Patent <<http://register.consilium.europa.eu/pdf/en/09/st11/st11417.en09.pdf>>

- this protection could be achieved, with regards to Community Patents, by amending Article 9a²¹ (government use) of the draft Regulation on the Community Patent in order to:
 - take into account use of Community patents not only by governmental authorities but also by EU institutions and bodies (the reference to the "government" in Article 9a could be replaced by a clear mention of Community and national central authorities); and to
 - take into account that legal tender euro banknotes represent a public interest of the euro area Member States “in sectors of vital importance to their socio-economic and technological development²²”.
- Certainly, such solutions would not solve all problems. The separate issue of harmonization of national patent law, relevant for purely national and EPC patents, would remain open; however, given the growing importance the Community Patent was expected to have, solving the issues related to the latter patent would have a considerable medium to long term impact.

The experts from Member States were of the opinion that EU Institutions should consider an amendment to the revised proposal for a Council Regulation on the Community Patent, taking into account the need of the ECB to protect legal tender euro banknotes²³. Such amendment could e.g. extend draft Article 9a to non-commercial use of a Community patent by an EU institution or body, within the ambit of their competences and if necessary for their exercise.

2.3. Issues related to legal tender of euro coins

2.3.1. *Collector coins*

In addition to normal circulation coins, there are also commemorative and collector coins. Collector coins are not intended for general circulation and their designs may not be too similar to other euro coins to avoid confusion. The Council adopted updated conclusions on

²¹ Article 9a Government use
Any provision in the law of a Member State allowing non-commercial use of national patents by or for the government may be applied to Community patents, but only to the extent that the use is necessary for essential defence or national security. The patentee should be informed as soon as reasonably possible about the act and be compensated in respect of the act by the government concerned. Any dispute as to whether a Community patent has been used as provided for in this Article or over the amount of compensation shall be decided by the national courts of the Member State concerned.

²² Art. 8, 30 and 31 TRIPS.

²³ Euro coins would fall under MS competence under any circumstances.

the issue of collector coins in 2002 "to ensure that Euro collector coins will be readily distinguishable from Euro coins intended for circulation"²⁴

Euro collector coins are legal tender only in the country of issuance. This is not an issue as long as these coins do not circulate. However there are recent cases where low denomination collector coins (5 €) issued in large quantities were used in transactions on a large scale, mainly because of their use as change by a public body. This can be a source of confusion for the public, especially outside the country of issuance.

ELTEG members were invited to consider four possible evolutions of the current framework for euro collector coins: (i) to let their present legal status remain unchanged but provide for a systematic use of precious metals to avoid their use for transaction purposes; (ii) to withdraw their legal tender status in the issuing Member State; (iii) to extend it to the whole euro area or (iv) to do nothing.

A clear majority of the members was in favour of the *status quo*. EL suggested complementing the first option by recommending that collector coins should be sold in special packaging to avoid confusion among the general public. FR was also in favour of several accompanying measures under the first option like special packaging. In addition, in order not to create confusion for consumers and to avoid the use of collector coins for commercial transactions, FR suggested that it could be possible to impose a minimum face value on collector coins.

The Group unanimously supported a proposal consisting of keeping the present status for euro collector coins while inviting Member States to take all appropriate measures, if needed, to try to prevent collector coins from being used for cash payments. It would be up to the Member States to decide what the most appropriate measures should be (e.g. special packaging, clear communication, sale prices above face value ...).

2.3.2. *The legal tender of 1- and 2- cent euro coins and rounding rules*²⁵

All 8 denomination euro circulation coins have legal tender status in all Member States of the euro area. The 1- and 2-cent euro coins allow consumers to pay the exact amount up to the last cent.

²⁴ In the Council Conclusions of 5th November 2002 the following conclusions were reached: "The face value of collector coins should be different from that of the coins intended for circulation (i.e. Euro collector coins cannot have a face value equal to the 8 denominations: 1, 2, 5, 10, 20, 50 Euro cent and 1 and 2 Euro); Collector coins should not use images, which are similar to the common sides of the euro coins intended for circulation. Furthermore, as far as possible, the designs used should also be at least slightly different from those of the national sides of circulation coins; Colour, diameter and weight of euro collector coins should differ significantly from the coins intended for circulation for at least two of these three characteristics. The difference will be regarded as significant if the values including tolerances are outside the tolerance ranges fixed for euro circulation coins; Collector coins should not have a shaped edge with fine scallops, or "Spanish flower"; The identity of the issuing Member State should be clearly and easily recognisable. Furthermore: Euro collector coins may be sold at or above face value; Approval for the volume of collector coins issue should be sought on an aggregate basis rather than for each individual issue; With respect to collector coins denominations that may coincide with the low denominations of euro banknotes, there does not seem to exist any significant risk of substitution. However, Member States should stand ready to consider any demands by the ECB on this matter; With respect to collector coins denominations that may coincide with the low denominations of euro banknotes, there does not seem to exist any significant risk of substitution. However, Member States should stand ready to consider any demands by the ECB on this matter; While Euro collector coins will have legal tender status in the issuing Member State, the competent authorities (NCBs, Mints or other institutions) should set up temporary arrangements through which owners of euro collector coins issued in other euro area Member States can receive the face value of those coins while bearing the costs related to this transaction."

²⁵ Only legal aspects of the rounding rules were discussed by the Members; other aspects of rounding such as e.g. economic, communicational or operational aspects were not considered.

Rounding regimes are in place in two Member States, in FI –in accordance with legislation- and in NL – according to an agreement between stakeholders. The rounding scheme implies the possibility of rounding the sums to be paid in a shop to the nearest five cents.

In Finland, there was a longstanding tradition of rounding small cash payments in Finnish markka to the nearest 10 penni. For continuity reasons, the Finnish Parliament adopted a new rounding act²⁶ in order to extend this practice as from the introduction of the euro and to round cash payment operations to the nearest five cent, thereby avoiding the use of the small euro coins.

In the *Netherlands*, the Social Forum on the Payment System (a body established by the Ministry of Finance which brings together retail organisations, the consumers' association, commercial banks and the NCB), recommended the nation-wide introduction of the rounding rule as from 1 September, 2004. Retailers applying the rounding rule inform their customers by affixing a special sticker at the entrance of their shops. Nevertheless, for a customer, it is still possible to pay the exact amount, using 1 and 2 eurocents.

BE is equally considering the possibility of a legislation which would allow for rounding rules to be used.

It should however be considered that for those members which have adopted rounding rules, these rules should not contravene certain principles, namely, that the issuing of small coins should not be discontinued in these countries as they are still legal tender and that small coins must be accepted to pay for a transaction despite the existence of rounding rules (for example, if a sum is rounded up to 5 cents, one could nevertheless pay this amount with coins of 1 and 2 euro cents).

Rounding rules seem to be contradictory to the notion of legal tender of coins for mainly two reasons:

- tendering the exact amount due does not extinguish the debt (except in NL), while the very notion of legal tender implies the possibility to settle the exact amount owed.
- due to rounding, and on average, in half of the cases the amount paid is higher and in half of the cases the amount paid is lower when the debt is settled in cash as opposed to other electronic means of payments.

After a tour de table, it was concluded that 10 members were in favour of inviting Member States to refrain from adopting new rounding rules.

²⁶ Finnish Rounding Act No 890/2000 of 27 October 2000.

Summary of the main conclusions:

I. Conclusions unanimously adopted by ELTEG

1. **Common definition of legal tender:** the Group supports a definition relying on three main criteria, seen as cumulative, in cases where a payment obligation exists: (1) **Mandatory acceptance of euro cash:** a means of payment with legal tender status cannot be refused by the creditor of a payment obligation, unless the parties have agreed on other means of payment; (2) **Acceptance at full face value;** the monetary value of a means of payment with legal tender status is equal to the amount indicated on the means of payment; (3) **Power to discharge from payment obligations :** a debtor can discharge himself from a payment obligation by transferring a means of payment with legal tender status to the creditor.

2(a) **The attribute of legal tender is acquired:** banknotes or coins acquire legal tender once they have been issued, i.e. entered into the liability side of the balance sheet of an issuing authority (NCB or national treasury) and have been put in circulation by/in the name of the issuer. Issuance as a whole is different from, and includes, the mere operational and physical act of "putting in circulation".

2(b) The attribute of legal tender is lost: the legal tender of a series of euro banknotes is lost by means of a Governing Council decision. As regards individual banknotes, they lose legal tender when they are taken out of circulation (and removed from the balance sheet of the issuing authority) or when they are totally destroyed. . The same can be said for coins: taken individually, the attribute of legal tender is lost when they are taken out of circulation (and are removed from the balance sheet of the issuing authority) or when they are totally destroyed. Concerning a series of coins, they lose legal tender by means of a Council Regulation.

3. **Status of Euro collector coins:** The Group supported a proposal consisting in keeping their current status (legal tender in the country of issuance only) while inviting Member States to take all measures deemed appropriate to prevent these coins from being used for cash payments.

4. **Banknotes stained by anti-theft devices** With regard to legal tender euro banknotes stained with security ink from anti-theft devices, only the Eurosystem is competent *in fine* (though without prejudice to judicial review) to ascertain whether these stained notes can be accepted for reimbursement or not and under what conditions.

5. The experts from Member States were of the opinion that EU Institutions should consider an amendment to the revised proposal for a Council Regulation on the **Community Patent**, taking into account the need of the ECB to protect legal tender euro banknotes. Such an amendment could e.g. extend draft Article 9a to non-commercial use of a Community patent by an EU institution or body, within the ambit of their competences and if necessary for their exercise.

II. Conclusions adopted by the majority of ELTEG members

6. **On the competence of public authorities to decide on the destruction of fit euro coins:** the decision does not belong to any national authority in isolation. Prior to the destruction therefore, the competent authority should consult the appropriate body (ECSC/MDWG).

7. **Total destruction of issued notes and coins by individual:** The majority of the Group

agreed that total destruction of small quantities of notes should neither be prohibited nor penalised, whereas unauthorized destruction of large quantities should be prohibited.

8. Mutilation of notes/coins for artistic purposes: A strong majority of Members agreed that this type of mutilation should not be encouraged but should however be tolerated. The Eurosystem should explicitly communicate that, in cases where banknotes are altered for artistic purposes, they should not be put into circulation again, while it is clear, according to the ECB rules, that they cannot be reimbursed.

9. Refusal of payments in cash in B to C relationships: the majority of the Members were in favour of the general acceptance of cash as a rule, refusal being the exception and always based on reasons related to the "good faith principle" For four Members -DE, FI, IE, NL-, contractual freedom provisions can qualify those provisions relating to legal tender.

10. Refusal of high denomination banknotes: For a strong majority of Members, high denomination banknotes should in principle be accepted. However, for 4 Members (DE, FI, IE, NL), the concept of legal tender does not affect the possibility of the parties agreeing that, based on contractual freedom, payments cannot be made with high denomination banknotes. The Group recommends adverting to the principle of good faith, being a principle common to the laws of all Member States, for the justification (or not) of a refusal.

11. Banknotes stained by anti-theft devices: Most Members were in favour of inviting Government and Central Banks to communicate with the retail sector concerning stained banknotes (for instance, with leaflets with clear explanations and photos) with the message being that those banknotes should be brought to the central bank, on the grounds that there is a very high probability that they are the product of a theft. Great care should however be taken in order to enhance certainty and to avoid confusion in preparing such a Communication, which is a delicate exercise.

12. Legal tender of (euro) 1 and 2 cents coins and rounding rules: The proposal to invite Member States to refrain from adopting new rounding rules was supported by 10 Members.**13. No surcharges** (either express or measures of equivalent effect on all other available means of payment) **can be imposed on payment through the use of euro banknotes and coins. Surcharges can be imposed on other means of payment**, the mere existence of *pouvoir libérateur* not attributing to them the quality of legal tender. Member from four Member States (IE, DE, FI, NL) considered that the imposition of cash surcharges was legally permissible and did not necessarily conflict with the legal tender status of currency.

The present report will be submitted to the Commission, the Council and the ECB Governing Council for information and eventually action.

The clear majority of the members considered the inclusion of the definition of legal tender in Regulation 974/88 possible. Beyond that, given the discussions held in the Group and the main conclusions reached, ELTEG members do not recommend legislative action in the field of legal tender. It is rather suggested to envisage a soft law approach in this field which could take the form of a Commission recommendation.

The ECB Governing Council could also consider whether it should provide any guidance on the level of clarity needed in the communication on matters of:

- banknotes stained by anti theft devices; and
- intentionally mutilated banknotes being non-exchangeable.

Members of the Legal Tender Expert Group (ELTEG)

No	Country	Organisation	NAME		
	Austria	Permanent Representation	Mr	Gerhard	Lerchbaumer
	Austria	Oesterreichische Nationalbank	Mrs	Claudia	Klier
	Austria	Ministry of Finance	Mr	Othmar	Hassenbauer
	Belgium	Treasury	Mr	Victor	De Robiano
	Belgium	National Central Bank	Mr	Carlos	Rubens
	Belgium	National Central Bank	Mr	Joseph	De Wolf
	Belgium	DG Organisation et Régulation du Marché	Mr	Paul	Cambie
	Cyprus	Central Bank of Cyprus	Ms	Stephania	Stephanou
	Cyprus	Central Bank of Cyprus		Eleni	Taxitari
	Cyprus	Central Bank of Cyprus	Ms	Maria	Kettirou
	Cyprus	Ministry of Finance		Loukia	Herodotou-Mouskou
	Cyprus	Permanent Representation of Cyprus	Ms	Florentia	Evripidou-Heracleous
	Cyprus	Permanent Representation of Cyprus	Ms	Chryso	Kolokotroni Maranda
	Finland	Ministry of Finance	Mr	Seppo	Tanninen
	Finland	Ministry of Finance	Ms	Minna	Aaltonen
	Finland	Central Bank	Mr	Pekka	Somerkoski
	France	Ministry Of Economics	Ms	Marianne	Carrubba
	France	Ministry of Economics	Mrs	Catherine	Julien-Hiebel
	France	Central Bank	Mr	Romain	Bardy
	France	Central Bank	Ms	Quitterie	Gondellon
	France	Permanent Representation	Ms	Fanny	Letier
	Germany	Ministry of Finance	Mr	Martin	Korczak

No	Country	Organisation	NAME		
	Germany	Deutsche Bundesbank	Mr	Torsten	Schaefer
	Greece	Ministry of Economy and Finance	Mr	Antigoni	Kouloumvaki
	Greece	Central Bank	Ms	Efi	Stefanou
	Ireland	Permanent Representation	Mr	Fred	Cooper
	Ireland	Central Bank	Mr	Joe	Doherty
	Ireland	Central Bank	Mr	Paul	McBride
	Ireland	CBFSAI	Mr	Shane	Connolly
	Italy	Permanent Representation	Mr	Francesco	Mauro
	Italy	Banca d'Italia	Mr	Giuseppe	Napoletano
	Italy	Ministry of Economy and Finance	Ms	Marta	Cofano
	Italy	Ministry of Economy and Finance	Ms	Stefano	Cappiello
	Luxemburg	Banque centrale du Luxembourg	Mr	Ulrike	Gotz
	Luxemburg	Banque centrale du Luxembourg	Mr	Patrice	Bernabei
	Malta	Central Bank of Malta	Mrs	Stephanie	Sciberras
	Malta	Central Bank of Malta	Mr	Keith J.	Mifsud
	Malta	Central Bank of Malta	Mr	Robert	Caruana
	Portugal	Permanent Representation	Mr	Francisco	Barros Castro
	Portugal	Banco de Portugal	Mr	Pedro	Machado
	Portugal	Ministry of Finance	Mrs	Maria	Castro
	Slovakia	Ministry of Finance	Mr	Igor	Barat
	Slovakia	Ministry of Finance	Mrs	Lucy	Ciráková
	Slovakia	Národná banka Slovenska	Mr	Milan	Gasparik
	Slovenia	Ministry of Finance	Mr	Aleš	Butala
	Slovenia	Ministry of Finance	Ms	Veronika	Pleteršek

No	Country	Organisation	NAME		
	Slovenia	Bank of Slovenia	Mr	Luka	Soukal
	Spain	Permanent Representation	Ms	Isabel	Riano
	Spain	Banco de España	Mrs	Paloma	Marin
	Spain	Banco de España	Mrs	Manuela	Sebastián
	Spain	Banco de España	Mrs	Cristina	Menéndez de Luarca
	The Netherlands	Ministry of Finance	Mr	Dirk	Krijnen
	The Netherlands	De Nederlandsche Bank	Mrs	Ester	Matthijsen
	MDWG		Mr	Gilles	de Gouyon
	MDWG		Mr	Maarten	Brouwer
	European Central Bank		Ms	Chiara	Zilioli
	European Central Bank		Mr	Panagiotis	Papapaschalis
	European Central Bank		Mr	Martin	Novak
	European Central Bank		Ms	Ann	Bőrestam
	European Central Bank		Mr	Olivier	Strube
	EC, DG MARKT		Mr	Jens	Gaster
	EC, DG MARKT		Mr	Oliver	Varhelyi
	EC, DG MARKT		Mrs	Daniela	Umstaetter
	EC, DG MARKT		Mrs	Véronique	Margerit
	EC, DG ECFIN		Mr	Benjamin	Angel
	EC, DG ECFIN		Mrs	Aliénor	Margerit
	EC, DG ECFIN		Ms	Agnes	Baka

No	Country	Organisation	NAME		
	EC, DG ECFIN		Mrs	Alexandra	Bernhard
	EC, DG ECFIN		Mrs	Ewa	Klima
	EC, DG ECFIN		Ms	Elena	Ortiz

Annex

Synoptic tables on the national legal frameworks

Table 1: General Issues

	National definition of legal tender	National provision penalising the refusal for a payment of banknotes and coins having the status of legal tender.	National provision penalising destruction or defacement of legal tender and non fraudulent reproductions of legal tender which may cause confusion to the general public.	National provision awarding legal tender status to other means of payment than banknotes and coins
BE	No.	<p>The principle of contractual freedom laid down in Article 1134 of the Belgian Civil Code allows parties to a contract each to agree on other means of settling an obligation to pay a sum of money than a payment in cash. However, the refusal by a trader to accept a cash payment from a consumer can be considered as an unfair trading practice by virtue of Article 94/6 of the Law of 14 July 1991 on trade practices and consumer information and protection, if such a refusal is not based on an objective and grounded reason, such as an exceptional and temporary security concern. Such a refusal, and the circumstance-related reasons justifying it, must be clearly and unambiguously posted at the entrance and close to the cash registers of the retailer's shop.</p> <p>In addition, it is generally accepted that a trader can legitimately refuse a banknote</p>	<p>Article 178ter of the Penal Code stipulates that: "Anyone who knowingly uses a banknote or coin which is legal tender in Belgium or another country as the medium for an advertisement or any other message, or anyone who knowingly renders it more difficult for such a banknote or coin to be used as a means of payment by damaging, defacing or altering it, or rendering it unfit in any way whatsoever, shall be punished by imprisonment for one week to three months and a fine of 26 to 1,000 euros or either one of those penalties".</p> <p>The Law of 11 June 1889 relating to printing works and documents having the external appearance of banknotes or other fiduciary values prohibits manufacturing, selling or distributing printing works or documents having the external appearance of banknotes issued in</p>	No.

		when an inspection of the banknote tendered, using the "feel, look and tilt" method recommended by the ECB, raises serious concerns about its authenticity.	Belgium or abroad, so as to facilitate the acceptance of these printing works and documents instead of genuine banknotes. Any infringement of this rule shall be punished with imprisonment for eight days to three months and a fine of 26 and 1,000 Euros or either one of those penalties".	
DE	<p>Section 14 of the Bundesbank Act, as amended by the Third Act on the introduction of the euro, reads as follows:</p> <p><i>"Without prejudice to Article 106(1) of the Treaty establishing the European Community, the Deutsche Bundesbank has the exclusive right to issue bank notes in the area in which this act is law. Euro bank notes shall be the only unrestricted legal tender. The Deutsche Bundesbank must publicly announce the denominations and distinguishing features of the notes it issues."</i></p>	Under German civil law, an obligation can only be discharged by a cash payment except as otherwise agreed by the parties to the contract. Parties are free to agree how the obligations are to be fulfilled.	In <i>Germany</i> issuing non-legal tender banknotes as alternative currency (<i>Ersatzwährung</i>) is criminalized (Section 35 of the Bundesbank Act) and the production of reproductions that are apt to be mistaken for paper money constitutes a regulatory offence (Section 128 of the Regulatory Offences Act).	<p>No such provision exists. However, the following information regarding the use of cash in relation to public authorities may be useful.</p> <p>i) Citizens are usually required to make their payments to the competent authority (e.g. section 224(1) of the Tax Code (Abgabenordnung)). Since public authorities close more and more cash offices, citizens are de facto bound to fulfil their obligations towards public authorities by cashless payments.</p> <p>ii) To receive payment from public authorities, citizens are often obliged to have a bank</p>

				<p>account.</p> <p>See e.g. Sections 224(3) of the Tax Code, 17a of the Act on Civil Servants Remuneration (Bundesbesoldungsgesetz), 51(1) of the Act on Promotion of Education (Bundesausbildungsförderungsgesetz), and 49(7) of the Act On Civil Servants Pension (Beamtenversorgungsgesetz).</p> <p>Only under exceptional circumstances may citizens ask for cash payments.</p>
EL	<p>Greek legislation does not provide for a definition of legal tender, however reference to the notion or even elements of a definition can be found in the following provisions:</p> <p>i) Article 1 of Law 2842/2000 regarding additional measures in implementation of Council Regulations (EC) 1103/1997, 974/1998 and 2866/1998, as applicable, on the introduction of the euro, reads as follows:</p> <p>"1. As from 1 January 2001 the euro shall substitute for the drachma as the currency of Greece in accordance</p>	<p>Article 452 of the Greek Penal Code punishes with a fine anyone who refuses to accept for payment money, which is legal tender in Greece.</p>	<p>With regard to the non-fraudulent reproductions of legal tender, it is noted that in Greece, copyright law protection is awarded expressly to euro banknotes on the basis of Article 6A of Law 2948/2001 (as added by Article 17 of Law 3148/2003) and Monetary Policy Council Act No 53/20.1.2004. The latter reflects the provisions of the ECB legal framework on the reproduction rules. The sanctions –including penal sanctions- that are to be applied for the infringement of such rules are provided for by the general copyright laws.</p> <p>As regards coins, Article 215A of the Penal Code applies (as inserted by</p>	<p>No. (Please note that the principle of contractual freedom allows contractual parties to agree on other means of payment apart from cash, leading to the discharge of the payment obligation. This does not mean, however, that these other means of payment have the status of legal tender.)</p>

<p>with the provisions of Council Regulations 1103/1997, 974/1998, 2866/1998, as applicable, and the provisions hereof. Banknotes and coins in drachmas shall continue to have the status of legal tender within the Greek territory until 28 February 2002.</p> <p>2. The euro as a means of discharging obligations shall always be taken at its nominal value."</p> <p>ii) Article 2 of the Statute of the Bank of Greece states that as from the adoption of the euro as the currency of Greece, the Bank of Greece may issue banknotes which have the status of legal tender in accordance with the provisions of Article 106 of the Treaty establishing the European Community and Article 16 of the ESCB Statute."</p> <p>iii) Article 66 of the Statute of the Bank of Greece states that banknotes denominated in drachmas issued by the Bank of Greece shall be legal tender throughout the Greek State; that is to say that they shall be accepted at their face value by the State and by all legal entities or natural persons in the discharge of debts, subject to the provisions of Article 68 of the Statute (regarding the withdrawal and exchange of any series of banknotes).</p>		<p>Presidential Decree 221/2005), which mirrors the provisions of EC Regulation 2182/2004 concerning medals and tokens similar to euro coins and introduces the applicable sanctions for infringements.</p> <p>There are no national provisions penalising destruction or defacement of the euro banknotes.</p> <p>Furthermore, there are no national provisions penalising destruction or defacement of the euro coins.</p>	
---	--	--	--

	<p>It is self-understood, from Article 2 in conjunction with Article 66 of the Statute of the Bank of Greece that Article 66 now refers to the euro banknotes.</p> <p>According to scholars, legal tender is the physical form of money established by a State as a common standard/measure for the value of goods, and in particular, as the sole mandatory means for the discharge of obligations. If the creditor does not accept the payment which is effected in legal tender, he incurs <i>in mora credendi</i>.</p> <p>A similar definition is contained also in case law that has been adopted, mainly in the field of counterfeiting (see the most recent decision 818/2008 of the Supreme Court).</p>			
ES	<p>Article 3 (2) of the Law 46/1998, of 17 December on the introduction of the euro states that bank notes and coins denominated in euro are the only bank notes and coins which have the status of legal tender in the national territory.</p> <p>Section 7(3), paragraph e of the Law of Autonomy of Banco de España states that one of Banco de España's basic functions is to issue legal tender bank notes.</p>	<p>No legal or statutory provisions limiting the use of bank notes as legal tender have been reported. This does not exclude the autonomy of contractual parties to decide which means of payment (cheques, scriptural money, foreign currency) they want for the settlement of their rights and obligations inter se.</p>	<p>In <i>Spain</i>, the issuance of banknotes that resemble legal tender banknotes and could easily be accepted instead of genuine banknotes is criminalized. Furthermore, Article 15.4 of “Law 13/1994, of 1 June, on the Autonomy of Banco de España” states that “any advertising which uses in full or in part banknotes or coins which are or have been legal tender, or their facsimile reproductions, must be previously authorised in each case by Banco de España under the conditions and the requirements set out in current</p>	<p>No.</p>

			<p>regulations”.</p> <p>No authorisation shall be required for the Government and the institutions under public law that depend on the Government.</p> <p>The Bank may, in accordance with established sanctioning procedures applicable to persons acting in the financial markets, impose fines of up to 601.012,104 euros on physical or legal persons or their</p> <p>administrators who advertise without the proper authorisation or who violate the conditions specified in such authorisation.”.</p>	
FR	No.	Article R.642-3 of the French Penal Code punishes the refusal of coins or banknotes having legal tender in payment”.	<p>Article R442-6 of the French Penal Code: A penalty of one year's imprisonment and a fine of €15,000 applies to the manufacture, sale or circulation of any articles, printed documents or forms which resemble the instruments referred to in article 442-1 so as to facilitate their acceptance in lieu of the tender they resemble.</p> <p>No penalisation of destruction of banknotes and coins</p>	No.
IE	<p>None</p> <p>Section 118(1) of the Central Bank Act, 1989, provides as follows:</p> <p>118. – (1) It shall be lawful for the</p>	No	<p>Section 123(1) of the Central Bank Act, 1989, prohibits defacement or mutilation of banknotes, which is made punishable by a fine. Section 15 of the Decimal Currency Act, 1969, prohibits destruction of coin which is made punishable by a</p>	No.

	<p>Bank to provide and issue in accordance with this Part notes to be known and in this part referred to as legal tender notes for the following denominations in respect of which the Minister has made an order under subsection (4) and such notes shall be current in the State and shall be legal tender in the State for the payment of any amount.</p>		<p>fine and/or imprisonment. The latter provisions are extended to euro coins by section 17 of the Economic and Monetary Union Act, 1998.</p> <p>Section 15 of the Decima Currency Act, 1969, provides as follows:</p> <p>(1) It shall not be lawful for any person (other than the Central Bank) except under and in pursuance of a licence issued by the Minister to melt down or break up any coin which has been issued under the repealed enactments or this Act or which is for the time being current in any country other than the State. (2) If any person acts in contravention of this section, or</p> <p>a) fails to comply with any condition attached to a licence under this section, he shall be guilty of an offence and shall be liable</p> <p>b) on summary conviction to a fine not exceeding £1,000 or at the discretion of the court to imprisonment for a term not exceeding one year or to both such fine and such imprisonment, or</p> <p>(ii) on conviction on indictment to a fine not exceeding £5,000 or at the discretion of the court to imprisonment for a term not exceeding two years or to both such fine and such imprisonment and, in addition, the court may order the articles in respect of which the offence</p>	
--	---	--	---	--

			<p>was committed to be forfeited.</p> <p>In addition, section 17 of the Economic and Monetary Union Act, 1998, provides that; "Section 15 of the Act of 1969 shall apply to coins issued under this Act and coins circulating in the State and issued by one or more of the other participating Member States which are comparable to coins issued under this Act."</p>	
IT	<p>i) Section 1277, Paragraph 1 of the Italian Civil Code provides that:</p> <p><i>"Pecuniary debts are paid with money which is legal tender in the State at the time of payment, at its face value."</i></p> <p>ii) Section 1278 of the Italian Civil Code reads:</p> <p><i>"If the sum due is indicated in money which is not legal tender in the State, the debtor has the power to pay in legal money at the rate of exchange of the day when the sum is due and at the place agreed for payment."</i></p>	<p>Section 1279 of the Italian Civil Code provides for actual payment in money which is not legal tender (if parties so agree). It reads as follows:</p> <p>"The provision of the previous section does not apply if money which is not legal tender in the State is indicated by "actual" or other equivalent term, unless it is impossible to procure such money when the debt becomes due."</p> <p>Under Article 693 of the Italian Penal Code "Whoever does not accept, for their value, money which is legal tender in the State, is punished with a fine up to 30 Euros". Such penal fine was decriminalized in 1981; thus, at present the amount of the fine is 30 Euros, but the application of that fine is up to the Public Administration, not anymore to the Criminal Courts. In case the application of the fine is challenged, Civil Courts have competence.</p>	<p>Article 142 of the Bank of Issue Consolidated Law (approved by Royal Decree 28 august 1910, n. 204) prohibits the production, issuance and/or circulation of any kind of notes or prints that may resemble banknotes, unless they are allowed under EC or ECB rules referring to euro banknotes.</p>	No.
CY	Partial elements of definition are	Subsection (i) of section 374 of the Penal Code, Cap. 154, punishes with a fine	Section 7H of the Copyright Law of 1976 provides that the reproduction, in whole	None

<p>foreseen in the following provisions:</p> <p>i) Subsection (1) of section 31 of the Central Bank of Cyprus Laws 2002 – 2007 provides that:</p> <p><i>«Subject to the European Community acts in force in the Republic and subsection (2), notes and coins, issued by the Bank, pursuant to the provisions of Article 106 of the Treaty shall be legal tender and accepted without limitation as to the amount, in the settlement of all debts, public or private. »</i></p> <p>ii) Subsection (1) of section 27 of the Central Bank of Cyprus Laws 2002 - 2007 provides that the pound shall be the monetary unit of the Republic, until the time of its substitution by the euro as the national currency.</p> <p>iii) Section 29 of the Central Bank of Cyprus Laws 2002 – 2007 reads:</p> <p><i>"(1)The Bank shall issue banknotes which circulate as legal tender in the Republic in accordance with the provisions of Article 106 paragraph (1) of the Treaty and Article 16 of the Statute.</i></p> <p><i>(2) The Bank shall issue coins which circulate as legal tender in the Republic. The volume of the coins issued shall be subject to approval by the European Central Bank. The</i></p>	<p>anyone who wilfully refuses to accept coins or notes current in the Republic at their face value*.</p> <p>(*This provision concerns only the refusal to accept banknotes and coins <u>at their face value</u>)</p>	<p>or in part, of euro banknotes requires approval by the Central Bank of Cyprus and is subject to the reproduction rules laid down in Decision ECB/2003/4 of 20 March 2003 on the denominations, specifications, reproduction, exchange and withdrawal of euro banknotes, subject to the control of the Central Bank of Cyprus.</p> <p>Section 13D of the Copyright Law of 1976 provides for penalties, in the form of a fine and/or imprisonment, in the event of unauthorised reproduction of euro banknotes.</p> <p>ii) Section 9 of the Currency (Counterfeiting and Other Related Matters) Law of 2004 provides that:</p> <p><i>"9-(1)(a) Without prejudice to the provisions of the Decision of the European Central Bank of 20 March 2003 on the denominations, specifications, reproduction, exchange and withdrawal of euro banknotes (ECB/2003/4) and of the provisions of section 4 of the present Law, any person who issues, imports or trades, without the authorization of the Central Bank, any object which is similar to a currency, on which a monetary unit, the symbol of a monetary unit of any country, or the symbol of the euro is indicated, is guilty of a misdemeanour and is subject to imprisonment not exceeding €3417, or to both of these penalties.</i></p>	
---	--	---	--

	<i>denominations and technical specifications of the euro coins shall be determined in accordance with the provisions of Article 106 paragraph (2) of the Treaty."</i>		<p>(b) <i>Paragraph (a) is not applied to medal and tokens to euro coins to which Regulation (EC) 2182/2004 applies."</i></p> <p>iii) Section 8 of the Currency (Counterfeiting and Other Related Matters) Law of 2004 provides that any person that defeatures banknotes or coins without authorization is guilty of a misdemeanour and is subject to a fine not exceeding €1708.</p> <p>iv) Section 348-356 of the Penal Code, Cap.154, penalises the production, circulation and export of banknotes or coins than are not genuine but resemble or apparently intend to resemble or pass for genuine banknotes or coins. The above provisions also penalise the production, circulation and export of genuine banknotes or coins prepared or altered so as to pass for banknotes or coins of a higher denomination.</p> <p>v) Under the Currency (Counterfeit and Other Related Issues) Law of 2004 counterfeiting activities that fall under the scope of this Law are offences punishable by a fine, imprisonment</p>	
LU	<p>i) Article 19 of the Law of 23 December 1998 concerning the monetary status and the Central Bank of Luxembourg reads:</p> <p><i>"The legal status of notes and coins denominated in euro and which are</i></p>	Section 556-4 of the Criminal Code sanctions natural/legal persons who refuse (in the absence of contractual arrangements stipulating otherwise) to accept notes and coins that are legal tender in Luxembourg in the discharge of payment obligations. The foreseen	<p>None for the destruction or defacement of legal tender banknotes and coins.</p> <p>Concerning non fraudulent reproductions (outside of the definition of counterfeiting), the issuance of banknotes that resemble legal tender banknotes and</p>	None

<p><i>legal tender in the European Community is determined by the Community rules applicable to those notes and coins."</i></p> <p>ii) Article 20(a) of the above mentioned law states that bank notes in francs are legal tender without limitation.</p> <p>Article 19 <i>The legal status of notes and coins denominated in euro and which are legal tender in the European Community is determined by the Community rules applicable to those notes and coins.</i></p> <p>Article 20 <i>Without prejudice to compliance with the rules referred to in Articles 17 and 18, the legal status of notes and coins denominated in francs and which are legal tender in the Grand Duchy of Luxembourg is subject to the following provisions:</i></p> <p><i>(a) Banknotes issued by the Central Bank and denominated in francs have unlimited legal tender status.</i></p>	<p>sanction is a fine of 25 to 250 euro.</p> <p>It is admitted that this article would also apply to banknotes.</p> <p>However in practise this provision was never applied.</p> <p>This provision must be balanced by the principle of contractual freedom foreseen under article 1134 of the Civil Code.</p> <p>At least article 556-4 of the Penal code sets a limit to contractual freedom: the parties cannot derogate to the face value shown on the banknotes and coins. They have to be accepted for their face value.</p> <p>On the basis of article 1134 of the Civil code and article 143 of the Commercial code, a court has ruled on 20.12.1918 that one may validly agree that the payment of a sum is done in a foreign currency which is not legal tender in the country.</p> <p>Article 556 <i>The following shall be punished by a fine of 25 to 250 euros:</i></p> <p>(4) <i>Persons who, in the absence of an agreement to the contrary, refuse to accept for their face value in the Grand Duchy notes and coins that are neither counterfeit nor have been altered;</i></p>	<p>could easily be accepted instead of genuine banknotes is criminalized (Article 501 of the Penal Code). The foreseen sanction is an imprisonment of 8 days up to one year and/or a fine of 250 up to 10 000 euro. The sanction applies not only to the production of non fraudulent reproductions but also to their selling, hawking or distribution, even without fraudulent intention.</p> <p>Article 501 <i>Persons who, even without fraudulent intent, manufacture, sell, hawk or distribute any objects, instruments, printed matter or forms obtained by any means whatsoever, which, owing to their external appearance, present a resemblance to coins, banknotes, annuity bonds, postal or telegraph stamps, securities representing property rights, debt securities or transferable securities other than banknotes or, generally, fiduciary securities issued in the Grand Duchy or abroad, which is such as to facilitate the acceptance of those objects, instruments, printed matter or forms in lieu of the securities imitated shall be punished by imprisonment of between eight days and one year and/or a fine of 251 to 10 000 euros.</i></p> <p><i>In addition, the objects, instruments, printed matter and forms and the plates or matrices used for their manufacture shall be confiscated, even where they do not belong to the person convicted.</i></p>	
--	---	---	--

<p>MT</p>	<p>None provided under Maltese law</p>	<p>Maltese law does not contain provisions which penalise the refusal for a payment of banknotes and coins having the status of legal tender.</p>	<p><i>The destruction or defacement of legal tender and non fraudulent reproductions of legal tender which may cause confusion to the general public is regulated by the provisions of the Central Bank of Malta Act (Cap. 204). Article 48 of this Act regulates the mutilation and defacement of Euro banknotes. This Article provides that: '48. Whosoever without lawful authority or lawful or reasonable excuse (the proof whereof shall lie on the accused person) mutilates, cuts, tears, or perforates with holes, any currency note or in any way defaces any currency note by writing, printing, drawing, or stamping thereon, or by attaching or affixing thereto anything in the nature or form of an advertisement, shall be liable, on conviction, to a fine (multa) not exceeding one hundred and fifteen Euro.'</i></p> <p><i>Article 55 of the Act provides for sanctions for medals and tokens similar to Euro coins. This Article provides that:</i></p> <p><i>'55. (1) Whosoever, unless authorised by the Commission of the European Union, produces, sells, imports or distributes for sale or for other commercial purposes medals and tokens, other than exempted medals and tokens, similar to Euro coins</i></p> <p><i>(a) which have the terms "Euro" or "Euro cent" or the Euro symbol on their surface; or</i></p> <p><i>(b) having their size inside the reference</i></p>	<p>None</p>
------------------	--	---	---	-------------

			<p><i>band appearing in Annex II of Council Regulation (EC) No 2182/2004 concerning medals and tokens similar to Euro coins; or</i></p> <p><i>(c) having on their surface any design similar to any of the national obverse designs or to the common reverse face of Euro coins, or is identical or similar to the edge design of the two-Euro coin, shall be guilty of an offence and shall, on conviction, be liable to a fine (multa) not exceeding twenty-three thousand Euro, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.'</i></p>	
NL	<p>Section 6:112 of the Dutch Civil Code states that in order to fulfil ones obligations, payments in money shall, at the time of payment, be current in the country the payment takes place in.</p>	<p>There are no such provisions on penalising the refusal for a payment of banknotes and coins having the status of legal tender.</p> <p>However the contractual freedom is limited by reasonableness and fairness in both situations that upfront cash payments are excluded as well as obliged.</p>	<p><i>Destruction or defacement of legal tender:</i> No legal provisions on this matter.</p> <p><i>Non fraudulent reproduction of legal tender:</i> a) It's prohibited to produce, to accept, to receive, to have in stock, to transport, to export or import printed matters or objects similar to banknotes or coins (Section 440 of the Criminal Code).</p> <p>b) The copyright of the euro banknotes is protected in the Netherlands. Infringement of a copyright (as on euro banknotes) is also a crime (Copyright Act art 31 and following articles)</p>	<p>Section 6:114 of the Civil Code holds that payment through the banking system is a valid means of discharge of a monetary debt unless the creditor has validly excluded this payment on a bank account.</p>
AT	<p>i) Section 61 of the Federal Act on the Oesterreichische Nationalbank (as amended) reads:</p> <p>"<i>Subject to the approval of the</i></p>	No.	<p>Pursuant to Article 81 of the Federal Act on the Oesterreichische Nationalbank, in Austria the issue and use of banknote imitations denominated in euro and intended for circulation constitutes an</p>	No.

	<p><i>European Central Bank, the Oesterreichische Nationalbank shall be empowered to issue bank notes denominated in euros. The bank notes denominated in euros which are issued by the Oesterreichische National- bank, the European Central Bank and the national central banks of the other Member States partici-pating in the Third Stage of EMU shall have the status of legal tender.</i></p> <p><i>The bank notes referred to in paragraph 1 must be accepted at their full nominal value without restriction unless a liability is to be met by an otherwise specified means of payment."</i></p> <p>ii) The Federal Act: Euro Act and amendment of the Divisional Coin Act 1988 and the Nationalbank Act 1984 (Bundesgesetzblatt No 72, 8 August 2000), (Article II (3)) states that euro and cent coins will have legal tender status in Austria. Coins that have not been withdrawn from circulation must be accepted by the Oesterreiechische Nationalbank and the Austrian Mint without limitation.</p>		<p>administrative offence</p> <p>Article 17 para. 1 no. 3 Austrian Coinage Act (Scheidemünzengesetz) states that it is forbidden to produce, import and distribute products which cause - due to their similarity - confusion with coins having the status of legal tender. An infringement can be punished to a maximum administrative fine of EUR 7.000.</p> <p>The Central Bank of Austria (Oesterreichische Nationalbank) is bound to the provisions of the ECB Decision of March 20, 2003 in redeeming mutilated banknotes.</p>	
--	--	--	--	--

	Article I (2) of the above-mentioned Act provides that as from 28 February 2002 bank notes and coins denominated in Austrian Schilling or Groschen shall lose their legal tender status.			
PT	<p>i) Section 6(1) of the new Organic Law of Banco de Portugal states that:</p> <p><i>"under the terms of Article 105 A of the Treaty establishing the European Community, the bank shall have the right to issue bank notes, which shall be legal tender and have discharging power"</i>.</p> <p>ii) Section 6(2) of the new Organic Law of Banco de Portugal states that:</p> <p><i>"the Bank shall put into circulation metal coins, including commemorative coins"</i>.</p>	Under Portuguese civil law, a monetary obligation can only be discharged by a cash payment except as otherwise agreed by the parties to the contract. Parties are free to agree on how the obligations are to be fulfilled.	In <i>Portugal</i> Article 9(1) of the Organic Law of Banco de Portugal establishes that "the reproduction of banknotes denominated in euro, in full or in part and regardless of the technical process used, as well as the distribution of these reproductions, even if limited to certain persons, can only be made in the cases and under the terms and conditions expressly provided for by the European Central Bank." The non-compliance with this provision is considered a breach of regulation, punishable by a fine. 'The mere manufacture or holding of plates, matrices, software or any other technical means enabling the reproduction of banknotes' is also prohibited. The violation of this provision is also considered a breach of regulation, punishable by a fine. The defacement of legal tender coins is sanctioned (Article 13 of Decree-Law n.º 246/2007), with a fine to up EUR 30.000 (Article 16).	None.
SI	<p>There is no specific definition of legal tender in national legislation in Slovenia.</p> <p>First paragraph of Article 3 of Euro Adoption Act (Official gazette of the</p>	<p>Penal provisions of 23 Article of Euro Adoption Act (Official gazette of the Republic of Slovenia 149/2006) state:</p> <p>"(1) A fine of 2,000 to 25,000 euros shall be imposed on legal and natural persons</p>	<p>Bank of Slovenia Act in second paragraph of Article 43 states:</p> <p>"(2) Banka Slovenije shall have the power</p>	<p>There are no explicit provisions awarding legal tender status to other means of payment. However there are some tax</p>

	<p>Republic of Slovenia 149/2006) states; "As from the euro adoption date, euro-denominated banknotes and coins shall become legal tender in Slovenia." In legislation "legal tender" is also mentioned in Occasional Coins Act (Official gazette of the Republic of Slovenia, 53/2007)</p>	<p>pursuing a business activity for an offence committed by</p> <p>1. not accepting euro-denominated banknotes and coins after the euro adoption date referred to in Article 2 of this Act;</p> <p>(2) A fine of 500 to 4,000 euros shall be imposed on the responsible person of a legal entity</p> <p>for committing an offence referred to in the preceding paragraph."</p> <p>Notwithstanding in <i>Slovenia</i> according to one of the basic principle of civil law, contractual parties are free to decide how their obligations will be fulfilled or terminated.</p>	<p>to supervise the implementation of Council Regulation (EC) No 2182/2004 of 6 December 2004 concerning medals and tokens similar to euro coins (OJ L 373, 21.12.2004, p. 1, hereinafter 'Regulation 2182/2004') in conjunction with Council Regulation (EC) No 2183/2004 of 6 December 2004 extending to the non-participating Member States the application of Regulation (EC) No 2182/2004 concerning medals and tokens similar to euro coins (OJ L 373, 21.12.2004, p. 7, hereinafter 'Regulation 2183/2004')."</p> <p>And connected penal provisions in the same act, Article 68 (for the banks) and 69 (for other entities):</p> <p>" Article 68</p> <p>(1) A fine of between EUR 8.000 and 80.000 shall be imposed on a bank or a savings bank for the following infringements:</p> <p>4. if it commits an act prohibited under Regulation 2182/2004 in conjunction with Regulation 2183/2004.</p> <p>(2) A fine of between EUR 1.000 and 4.100 shall</p> <p>be imposed on the responsible person in a bank or a</p>	<p>provisions favouring cashless transactions between legal entities.</p>
--	--	--	--	---

			<p>saving bank which commits an act under the previous paragraph.."</p> <p>"Article 69</p> <p>(1) A fine of between EUR 1.000 and 6.000 shall be</p> <p>imposed on a legal person or a branch of a foreign legal person for the following infringements:</p> <p>(...)</p> <p>3. if it commits an act prohibited under Regulation</p> <p>2182/2004 in conjunction with Regulation 2183/2004.</p> <p>(2) A fine of between EUR 400 and 3.000 shall be imposed on the responsible person of a legal person or of a branch of a foreign legal person which commits an act under the previous paragraph.</p> <p>(3) A fine of between EUR 600 and 4.000 shall be</p> <p>imposed on an individual sole trader and an individual independently pursuing an activity who commit an act under the first paragraph of this Article.</p> <p>(4) A fine of between EUR 600 and 1.200 shall be</p>	
--	--	--	---	--

			<p>imposed on a natural person who commits an act under point 3 of the first paragraph of this Article.</p> <p>In <i>Slovenia</i>, in Penal Code there are no provisions penalizing destruction or defacement of a legal tender and non fraudulent reproductions of legal tender, of course any fraudulent use of non-legal tender banknotes that may create confusion with genuine legal tender banknotes may be prosecuted for fraud or counterfeiting (Article 211 / 243 of the Slovenian Penal Code, Official Gazette, 55/2008).</p>	
SK	<p>The Law No. 566/1992 Coll. on the National Bank of Slovakia, as amended regulates in the</p> <p>PART FOUR</p> <p>ISSUE OF BANKNOTES AND COINS</p> <p>Article 15</p> <p>(1) In accordance with separate legal provisions,1aa) the National Bank of Slovakia shall have the right to issue euro banknotes and euro coins, including commemorative euro coins, which are legal tender in the euro area and in participating third countries, which are intended for circulation, and which in their denomination are used to settle monetary liabilities. In accordance</p>	<p>The Criminal Code penalises a refusal for a payment of banknotes and coins having the status of legal tender in Article § 273.</p> <p>“Section 273 Jeopardizing the circulation of money: Whoever rejects, without legal reason, the national legal tender, or damages the national legal tender, shall be punished by imprisonment for up to six months.”</p>	<p>In <i>Slovakia</i> issuance of non-legal tender coins and banknotes is a criminal activity, which can be punished as a fraud (Article 250 of the Slovak Penal Code). Non-compliant reproductions can also constitute an offence under Article 27 of the Act. No. 372/1990 Coll. on Offences in valid wording.</p> <p>Article 17b of the Law on the National Bank of Slovakia says</p> <p>(1) It shall be prohibited to knowingly damage legal tender, including their destruction or mutilation without lawful reason.</p> <p>Article 17d of the mentioned Law says</p> <p>(1) Fabrication and use of reproductions of euro banknotes and euro coins or their</p>	<p>No. See our answer to the Point 1.</p>

<p>with separate legal provisions,1aa) the National Bank of Slovakia has also the right to issue collector euro coins which in their denomination are legal tender only in the Slovak Republic and which are not primarily intended for circulation, they are clearly distinguished from the euro coins intended for circulation and they are marked with a denomination in the euro or euro cents which is different to the denomination of the euro coins intended for circulation. Except of issuing euro banknotes or euro coins in accordance with separate legal provisions1aa), no other legal person or natural person shall issue banknotes or coins in the Slovak Republic.</p> <p>The Law on the Introduction of the Euro in the Slovak Republic No. 659/2007 Coll. of 28 November 2007 says in</p> <p>Section I</p> <p>PART ONE</p> <p>INTRODUCTORY PROVISIONS</p> <p>Article 1</p> <p>(1) This Act governs certain measures and procedures relating to the preparation for the introduction and to the introduction of the euro currency in the Slovak Republic</p>		<p>parts are subject to separate legal provisions.3h Reproductions of euro banknotes and euro coins or their parts, their electronic images and any objects which are even partially similar in appearance, parameters or properties to any euro banknote or euro coin, including medals and tokens, on which are written in any grammatical form the words "euro", "cent" or "euro cent", the symbol of the euro currency "€", the alphabetical code of the euro "EUR", or which is even partially similar in appearance to the common side or any national side of a euro coin, shall not be made or used unless rules on copyright and conditions for fabrication and use of reproductions of euro banknotes and euro coins are fulfilled, pursuant to separate legal provisions.3h)</p> <p>3h For example, Council Regulation (EC) No2182/2004 of 6December 2004 concerning medals and tokens similar to euro coins (OJ L373 of 21 December 2004); Decision of the European Central BankECB/2003/4 (2003/205/EC) of 20March 2003 on the denominations, specifications, reproduction, exchange and withdrawal of euro banknotes; Commission Recommendation2005/504/EC of 27May 2005 concerning authentication of euro coins and handling of euro coins unfit for circulation (OJ L184 of 15July2005); Council Regulation (EC) No1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro</p>	
--	--	--	--

<p>(hereinafter the “introduction of the euro”) as the sole legal tender, of the single currency and currency unit under legally binding acts of the European Communities.</p> <p>PART TWO</p> <p>CASH CIRCULATION</p> <p>Dual cash circulation and the exchange and use of Slovak banknotes and coins</p> <p>Article 3</p> <p>(1) As of the euro introduction date, the cash in circulation in the Slovak Republic shall change over from the Slovak currency to the euro, with euro banknotes and coins, including collector’s euro coins issued by the National Bank of Slovakia,18 becoming legal tender in their respective denomination for all cash transactions in the Slovak Republic; the dual cash circulation period shall begin as of the euro introduction date and last for sixteen calendar days including the euro introduction date.</p>			<p>against counterfeiting (OJ Special Edition Chapter 19 Volume04); Council Regulation (EC) Nø1339/2001 of 28 June 2001 extending the effects of Regulation (EC) Nø1338/2001 laying down measures necessary for the protection of the euro against counterfeiting (OJ Special Edition Chapter 19 Volume04); European Central Bank Guideline No ECB/2003/5 (2003/205/ES) of 20 March 2003 on the enforcement of measures to counter noncompliant reproductions of euro banknotes and on the exchange and withdrawal of euro banknotes (OJ Special Edition Chapter 10 Volume04).</p> <p>The Criminal Code in Article 273 says:</p> <p>“Section 273 Jeopardizing the circulation of money</p> <p>Whoever rejects, without legal reason, the national legal tender, or damages the national legal tender, shall be punished by imprisonment for up to six months.”</p> <p>The Law No. 372/1990 Z. z. on misdemeanours in Article 27 says</p> <p>“Misdemeanours in the area of finance and the Slovak currency</p> <p>(1) A misdemeanour is committed by whoever</p> <p>a) illegally produces a reproduction of</p>	
--	--	--	--	--

			<p>legal tender, a cheque, a security or a payment card, or illegally introduces into circulation an object which could be mistaken for legal tender, a cheque, a security or a payment card.</p> <p>(2) Such misdemeanour pursuant to paragraph 1 shall be punished with a fine of up to EUR 165.”</p>	
FI	<p>Section 10 of the Currency Act of 16 April 1993 contains an obligation for the Bank of Finland to accept bank notes and coins without limit.</p> <p>In addition, by virtue of the Penal Code of Finland (39/1889) Chapter 37 – Means of Payment offences Section 12 – Definitions (602/1997) "for the purposes of this chapter, (1) money is defined as to bank notes and coins that are legal tender in Finland or another country.</p>	<p>Freedom of contract when dealing with payment of debts. Contractual parties may choose the means by which their payment obligations are discharged. The Consumer Protection Act of 1978 consumers have to be informed clearly ex ante about the acceptable means of payment.</p>	<p>By virtue of the Penal Code of Finland (39/1889) Chapter 37- Section 7 – Circulation of imitation money (769/1990) A person who prepares or produces for distribution among the public or distributes among the public a form, mark, picture or other object that is deceptively similar to legal tender shall be sentenced for circulation of imitation money to a fine or to imprisonment for at most one year.</p>	No.

Table 2- Banknotes' issues

	Ceilings above which it is forbidden to pay in cash?	Refusal of high denomination banknotes can be refused as a means of payment?	Current national practice as regards acceptance of high denomination banknotes?
BE	<p>Article 10bis of the Law of 11 January 1993 on the prevention of use of the financial system for the purpose of money laundering and financing of terrorism, which implements Council Directive 91/308/EEC of 10 June 1991, provides that the selling price of real estate can only be paid by means of a cheque or wire transfer, with the sole exception of 10% of the price in so far as this amount does not exceed 15,000 euros (in which case, cash payment can be considered). Article 10ter of the same Law provides that a trader's selling price for any good or property cannot be paid in cash when its value equals 15,000 euros or more.</p> <p>Some kinds of State income (such as taxes, fees, etc.) may legally only be paid by means of a wire transfer.</p> <p>By virtue of Article 5 of the Act of 12 April 1965 on the protection of the remuneration of workers, wages of civil servants may only be paid by means of a wire transfer. The same rule is applicable to workers in a private-sector enterprise as soon as the works council, the trade unions or the majority of staff members of that enterprise have decided to adopt this means of payment.</p>	<p>As a rule, all banknotes in Euros, irrespective of their denomination, have legal tender status and must be accepted when they are tendered in payment and discharge of a sum of money, except when both parties to the transaction agree on another means of payment.</p> <p>The refusal by a trader to accept high denomination banknotes from a consumer can be considered as an unfair trading practice by virtue of Article 94/6 of the Law of 14 July 1991 on trade practices and consumer information and protection, if such a refusal is not based on an objective and grounded reason, such as the unmistakable disproportion between the total amount to be paid by the consumer and the high denomination of a banknote offered in payment and discharge</p>	<p>In 2005, the Ministry of Economic Affairs published a memorandum²⁷ on the refusal by traders of euro banknotes in payment of sums of money, after consultation of interested economic actors (including representative trade and retail organisations) in the framework of a working group chaired by the NBB. This memorandum is intended as a general guide for the Economic Inspection Department of the Ministry of Economic Affairs in case of complains from consumers against traders. Despite the fact that these guidelines are merely a matter of soft law, they have been widely followed by all parties, who have especially welcomed clarification of the rules.</p>

²⁷

Posted on the website of the NBB: for the French version, see <http://www.nbb.be/doc/ts/Enterprise/Activities/NotesCoins/Refus200et500EUR.pdf>.

		by this consumer.	
DE	<p>Section 3(1) of the new Coinage Act reads:</p> <p><i>"No one is obliged to accept German euro commemorative coins of an amount more than 100 euro in a single payment. If a single payment is made both in euro coins and German commemorative coins, no one is obliged to accept more than 50 coins, even if this amount is less than euro 100".</i></p> <p>Section 3(2) of this Act contains an obligation for the Bundesbank and Bundeskassen to accept euro coins and euro commemorative coins without restrictions.</p>	<p>No legislation on the refusal of high denomination banknotes exists. Parties are free to agree on how an obligation is to be fulfilled. In case of a refusal that is included in General Terms and Conditions (e.g. used by a vendor) the civil law regulations on General Terms and Conditions has to be followed (regarding inclusions of those Terms and Conditions and certain customer protection rules).</p>	<p>There are numerous reports, that high denomination banknotes are refused by some parties, e.g. petrol stations,</p>
EL	<p>i) According to Ministerial Decision 1015/31.1.2005, payment of debts by the public to the tax authorities exceeding a certain value can only be done by cheque. The threshold is 500 EUR for companies and entities / natural persons acting as professionals and 1.000 EUR for all other legal or natural persons.</p> <p>ii) In addition, payments by the Greek State to the public <i>may</i> be done by bank transfer to the account of the beneficiary for amounts exceeding 1.500 EUR, if the specific tax authority office does not hold sufficient cash. For amounts exceeding 10.000 EUR, and irrespective of whether the tax office holds enough cash, the payment <i>shall</i> be done by bank transfer (Ministerial Decision 1109228/8434/0016/8.12.2006).</p>	<p>The use of high denomination banknotes could, in the Greek civil law system, and depending on the circumstances, be deemed to be in contrast with the principle of good faith. Art 281 of the Greek Civil Code holds that the exercise of a contractual right is not allowed when this would exceed the limits of good faith. Accordingly, the payment for which high denomination banknotes were offered could be refused, without the creditor incurring in mora credendi. That is to say that a payment in large bills can be considered unreasonable in relation to the obligation and therefore may be refused under civil law. Customary law may indicate what is the amount of cash reasonable and adequate for specific</p>	<p>No peculiarities to report as regards the acceptance, in practice, of high denomination banknotes.</p>

		payments.	
ES	Concerning coins, the Ministerial Order of 23 March 1999 on the first issue of coins denominated in euros, determines, in accordance with Article 11 of Council Regulation 974/98/EC, that nobody will be obliged to accept more than fifty coins in each payment. In addition, this provision states that coins will be accepted at the public desks without restriction.	No.	In practice, high denomination banknotes are sometimes refused.
FR	<p>(results of the AML Directive transposition)</p> <p>Sections L.112-6 to L.112-8 of the Code Monétaire et Financier limit:</p> <p>I. - cannot be made in cash the payment of a debt superior to an amount fixed by decree, taking into account the place of the tax domicile of the debtor and the professional scope or not of the operation.</p> <p>Beyond a monthly amount fixed by decree, the payment of treatments and salaries is subjected to the ban mentioned in the previous paragraph and must be made by crossed check or by credit transfers in a bank or mail account.</p> <p>II. - in spite of the measure of I, the spending of the granted services which exceed the 450-euro sum must be paid by credit transfers.</p> <p>III. - the measures which precede are not applicable:</p> <p>A) In payments realized by persons who are incapable to oblige themselves by check or by another means of payment, as well as by those who have no deposit account;</p> <p>B) In payments made between physical persons not acting for professional needs;</p> <p>C) In the payment of Government expenditure and the others</p> <p>French jurisprudence has so far not considered that cash payments made in breach of the above provisions do not validly discharge, from a civil law point of view, the obligation to pay.</p>	<p>Without prejudice to article 112-5 of the monetary and financial code (see column on the right) refusal of high denomination banknote is treated no differently from the refusal of banknotes in general (see answer to Question n°1 and the quotation of article R.642-3 of the penal code).</p> <p>The Supreme Civil Court (Cour de Cassation) has already punished the refusal of any payment in cash but not specifically for the high denomination banknotes. However, as regards HDB, the Banque de France recalls systematically that the refusal of HDB (including by posting) is punished by the article R 642.3 of the Penal code.</p> <p>Besides, it seems to us that any national provision which would grant the right for a retailer to refuse a high denomination banknote would be against community law and against legal tender.</p> <p>In practice however, France is not</p>	<p>Article 112-5 du Code Monétaire et Financier: When payment is made in banknotes and metallic coins, the debtor shall tender the exact amount (<i>“obligation de faire l’appoint”</i>). Combined with the rule presented on the column on the left (penalization of refusal of any banknote) this gives the following legal situation: banknotes may be refused when their value is above the debt to be extinguished (in theory: a 20 euro note can be refused for a debt of 19€ and, similarly, a 500 euro note for a debt of 450 eur for instance. As can be seen from this example, in theory, there is no specific regime for HDB. In practice however, the <i>“obligation de faire l’appoint”</i> will be brought forward by retailers mostly when HDB are at stake.</p>

		very concerned by this issue. Indeed, ATMs do not distribute high denomination banknotes and the majority of transactions in cash are made with 10, 20 or 50 euro banknotes. Payments with higher denominations are very rare, also in view of the large acceptance of non cash means of payment even for very low amounts (for example, most of the retailers accept the payment card from 15 euros).	
IE	Section 10(1) of the Economic and Monetary Union Act 1998 provides that no person, other than the Central bank of Ireland and such persons as may be designated by the Minister of Finance by order, shall be obliged to accept more than 50 coins denominated in euro or cent in any single transaction.	There is no precise statutory provision to this effect but it is possible to refuse high value banknotes in certain circumstances. Before a debt has been incurred the issue of any obligation to accept legal tender does not arise and the supplier of a good or service may legally stipulate that they will not accept notes above a certain value for certain transactions. When a customer is on notice of this fact they contract with the supplier subject to this condition.	This is a matter for the parties to a contract to determine
IT	Yes. <i>‘The transfer of cash or of bankbooks or Postbooks at the bearer or of titles at the bearer in euro or in foreign currencies, enacted among different subjects for whatever reason, is forbidden when the value of the operation, even if fractionated, is equal or superior to € 12.500. The transfer may be enacted through banks, electronic money institutions and Poste Italiane S.p.A.’</i> (Article 49, Paragraph 1, Legislative Decree 21 November 2007, N°. 231. The ceiling amount was increased from € 5.000 to € 12.500 by Article 32, Paragraph 1, lett. a), of the Decree-Law 25 June 2008, N°. 112). The breach of the above-mentioned prohibition does not affect the effectiveness of the transfer of money under the civil Law; nevertheless, an administrative fine from 1	No.	It depends on the context in which the payment has to be done. Generally, the acceptance of payments with pieces of EUR 200 and EUR 500 is easier when the amount to be paid justifies the use of such kind of banknotes.

	<p>up to 40 per cent of the transferred amount shall be applied (Article 58, Paragraph 1, Legislative Decree 21 November 2007, N°. 231: <i>‘without prejudice for the effectiveness of the acts, the violations of provisions under Article 49, Paragraphs 1, 5, 6 and 7 is subject to a pecuniary administrative fine from 1 up to 40 per cent of the transferred amount’</i>).</p> <p>The legal entity to which the agent belongs is jointly liable with the agent for the payment of the pecuniary administrative fine (Article 59 Legislative Decree 21 November 2007, N°. 231).</p> <p>Law No. 197 of 3 may 1991 provides for a number of legal instruments aimed at combating money laundering. Among those instruments, the Law prohibits any direct cash transfer above 20 million lire, making an exception for cash transfers between authorised intermediaries such as banks, investment firms, financial intermediaries, insurance companies, post offices, OICVM and Monte Titoli S.p.A.</p> <p>All other persons wanting to transfer cash in excess of 20 million lire have to use the above mentioned intermediaries. These intermediaries have to record the identity of the payer, the amount, date and consideration of the cash payment.</p> <p>The final payee has the right to receive the cash as from the third working day after the acknowledgement of the authorised intermediary. When the debtor notifies the creditor of an acknowledgement received from the relevant intermediary, the former is discharged from his/her payment obligations under the Civil Code.</p>		
CY	There are no provisions establishing ceilings above which it is forbidden to pay in cash	There is no statutory provision to this effect but it is possible to refuse high denomination banknotes as a means of payment based on the contract law e.g. if the supplier gives notice to the customer of non – acceptance of high denomination banknotes prior the formation of a contract.	
LU	None for euro banknotes and coins apart the limit foreseen by article 11 of Council regulation EC 974/98.	According to article 556-4 of the Penal Code, banknotes and coins which are genuine and are legal	In some shops and restaurants, high denomination banknotes are refused as a means of payment.

<p>Section 20(b) of the Law of 23 December 1998 concerning the monetary status and the Central Bank of Luxembourg limits the legal tender of franc coins for each denomination for up to one hundred times their face value.</p> <p><i>Article 20 Without prejudice to compliance with the rules referred to in Articles 17 and 18, the legal status of notes and coins denominated in francs and which are legal tender in the Grand Duchy of Luxembourg is subject to the following provisions:</i></p> <p>(...)</p> <p><i>(b) Coins placed in circulation by the Central Bank and denominated in francs have legal tender status for each denomination for up to one hundred times their face value.</i></p>	<p>tender in Luxembourg cannot be refused, except a contractual provision stipulates differently (see also the answer given above).</p> <p>The refusal of high denomination banknotes or small coins can be justified by the principle of contractual freedom. One has to distinguish between 1) consensual contracts, 2) membership agreements and 3) notice boards.</p> <p>1) Consensual contracts:</p> <p>Parties are free to agree on any payment means. The only limit in case banknotes and coins are used is the respect of the face value shown by banknotes and coins. 2) Membership agreements:</p> <p>Article 1135-1 of the Civil code provides that the general terms of a contract which have been drawn up by one party are stringent to the other one only if the latter party has been able to know them at the time of signing the contract and if she has to be considered as having accepted them.</p> <p>Furthermore, the modified law of 25 August 1983 on the legal protection of consumers considers as excessive any provision stating as undisputable the consumer's adhesion to clauses which he had</p>	<p>The refusal is preannounced either outside or at the counter.</p> <p>Two kinds of arguments are given for refusing high denomination banknotes: 1) the fear of receiving a counterfeit</p> <p>2) the impossibility to give to several customers change.</p> <p>Without prejudice to what is mentioned in the column beneath, the Minister of Justice after referring to article 10 of the Council regulation EC 974/98 has given the following answer to a parliamentary question (question parl. #53 24.08.2004) on the refusal of high denomination banknotes: <i>“The euro having legal tender status, it is not possible for a retailer to refuse the payment by euro banknotes and coins, that's to say that the retailer cannot refuse the payment by 100, 200 or 500 euro banknotes as long as the amount of the transaction is equal or greater to the amount of the banknotes presented. But on the other hand, in case the customer is not able to give the exact money there is no obligation for the retailer to have in his cashbox the amounts to give some change. Thus the retailer has the right to refuse for instance a 500 euro banknote for the payment of a product</i></p>
---	--	--

		<p>actually not the opportunity to learn about before the conclusion of the contract.</p> <p>3) Notice boards</p> <p>A retailer is considered to be in permanent offer and the sale is considered to be perfect if there is agreement on the object and the price. If the retailer restricts the use of banknotes or coins by notice boards, the restriction enters the contractual ground. One has to be sure that the customer had learned about the restriction and that he freely, expressly and enlightened agrees to it. He does not have to agree to it in writing.</p> <p>In conjunction article 556-4 of the Penal code, a retailer refusing without any prior notice, in the absence of a contrary contractual provision and without explanations takes the risk to infringe article 556-4.</p>	<p><i>costing only a few euro.”</i></p>
MT	There are no established ceilings above which it is forbidden to pay in cash.	Legally high denomination banknotes cannot be refused as a means of payment.	In practice, high denomination banknotes are accepted for payment which approximates the value of the note being tendered.
NL	There are no provisions that limit the amounts up to which bank notes can be used in cash payments. However, the significance of legal tender status is limited in that Section 6:112 of the Netherlands Civil Code states that money paid to perform an obligation must, at the time of payment, be current in the country in whose currency is paid.	Even if payment in cash has not been excluded (see above), cash payment with high denomination banknotes can be refused if agreed in advance (as part of the contract)	It is quite common practice that retailers refuse to accept payments by high denominations of banknotes. This is usually announced upfront, for instance by

	<p>Also, payment can be of such a nature (e.g. in large bills or small change) that it would be considered unreasonable and therefore may be refused under civil law (this general principle of fairness and reasonableness – which permits parties to disapply a legally binding rule insofar as it is unreasonable taking into account the specific circumstances of their situation – has been laid down in Section 6:2 of the Netherlands Civil Code).</p> <p>In practice, payment with banknotes is to a certain extent discouraged due to legislation that intends to prevent money laundering and the financing of terrorism (Act on prevention of money laundering and the financing of terrorism). Unusual cash transactions are defined as transactions with a value of more than EUR 15,000 (or EUR 25,000 in case of the sale of goods of high value). Such transactions have to be notified to a government agency, i.a. by banks, other financial service providers, and those who sell cars, ships, works of art, antiquities or jewellery, as well as by lawyers, accountants, notaries, real estate agents and trust companies.</p> <p>It should also be noted that Section 10 of the Royal Decree on "Kasbeheer" holds that Ministers will promote payments through the banking system for the discharge of debts to the State and will discourage the use of credit cards, cash payments and cheques for the discharge of debts to the State</p>	<p>in view of the principle of contractual freedom. However, a provision that certain denominations are not allowed may possibly under some circumstances be considered unreasonable under civil law ii) Also, payment can be of such a nature(e.g. in large bills or small change) that it would be considered unreasonable and therefore may be refused under civil law (this general principle of fairness and reasonableness - which permits parties to disapply a legally binding rule insofar as it is unreasonable taking into account the specific circumstances of their situation - has been laid down in Section 6:2 of the Dutch Civil Code).</p> <p>On the other hand, the requirement that payment in cash, or certain denominations, is not allowed may possibly under some circumstances also be considered unreasonable under civil law.</p>	<p>a sticker on the front door of a shop.</p> <p>In addition, retailers are likely to refuse high denomination banknotes if the amount of the transaction is small (and acceptance of the high denomination banknotes would require a large amount of change).</p>
AT	<p>According to Article 8 para. 3 Austrian Coinage Act (Scheidemünzengesetz) no person is obliged to accept more than 50 coins. Concerning coins dedicated to collection, no one is obliged to accept more than 10 pieces and up to a maximum amount of EUR 1.000. The Austrian Central Bank (Oesterreichische Nationalbank) is obliged to accept coins without restriction and the Republic of Austria, the Federal Provinces and Municipalities (Gebietskörperschaften) have to accept up to 100 coins for one single payment.</p>	No.	<p>In principle high denomination banknotes are accepted in Austria. However, some shops have signs that point out that 200 and 500 Euro banknotes are not accepted.</p>
PT	<p>No. Under Portuguese civil law, a monetary obligation can only be discharged by a cash payment except as otherwise agreed by the parties to the contract. Parties are free to agree</p>	No.	<p>Many retailers tend to refuse the acceptance of high denomination</p>

	on how the obligations are to be fulfilled.		banknotes, in particular EUR 200 and EUR 500 denominated banknotes.
SI	<p>Article 37 of Prevention of Money Laundering And Terrorist Financing Act, (Official Gazette of the Republic of Slovenia, 60/2007, page 8332)</p> <p>states:</p> <p>"(Limitations on cash operations)</p> <p>(1) Persons pursuing the activity of selling goods in the Republic of Slovenia shall not accept cash payments exceeding EUR 15,000 from their customers or third persons when selling individual goods. Persons pursuing the activity of selling goods shall also include legal entities and natural persons who organize or conduct auctions, deal in works of art, precious metals or stones or products thereof, and other legal entities and natural persons who accept cash payments for goods.</p> <p>(2) The limitation for accepting cash payments referred to in the preceding paragraph shall also apply where the payment is effected by several linked cash transactions exceeding in total the amount of EUR 15,000.</p> <p>(3) Persons pursuing the activity of selling goods shall receive payments referred to in paragraphs 1 and 2 of this Article from the customer or third party on their transaction accounts, unless otherwise provided by other Acts."</p> <p>Article 36 of Tax Procedure states, that legal and other entities, which conduct business and public bodies have to perform all the payments for goods or services cashless, by transfers on the accounts, except smaller payments, or if relevant records are guaranteed.</p>	There is no explicit provision in Slovenian legislation that would allow refusal of high denomination banknotes.	Current national practice would be that is reasonable to refuse high denomination banknotes for goods or services that might cost only few euros, for technical reasons, despite that kind of practice is forbidden by the law.
SK	<p>No, Article 17a of the Law on the National Bank of Slovakia says:</p> <p>(1) Within cash transactions in the Slovak Republic, it shall be prohibited to refuse to accept legal tender^{3b} in its nominal value without lawful reason, or to condition the acceptance of legal tender by other than lawful reason or similar distortion of the circulation of legal tender; this shall be without prejudice to the making of payments in a foreign currency in accordance with separate legal provisions or the right of participants</p>	No, a refusal of high denomination banknotes is not legally allowed.	There are no specific rules or procedures relating to the acceptance of high denomination banknotes in the Slovak Republic.

<p>in a legal relationship to agree on payments in a foreign currency. Where cash payments are made, the payer shall allow for the payee to check the banknotes and coins upon receipt for their correct number and authenticity, and the payer shall at the request of the payee sort the banknotes and coins by their denomination; this shall also apply to banknotes and coins in a foreign currency.</p> <p>(2) As of the euro introduction date, legal persons and natural persons in the Slovak Republic shall, in regard to the making of monetary payments, accept legal tender, they may refuse legal tender and return accepted legal tender into circulation pursuant to separate legal provisions applicable in the euro area to euro banknotes and euro coins,3c and, in the extent set out in these separate legal provisions3c), pursuant to the terms laid down in this Act or in other separate legal provisions.</p> <p>(3) As of the euro introduction date, the National Bank of Slovakia, as well as banks, other credit institutions, branches of foreign banks, branches of other foreign credit institutions, foreign banks and other foreign financial institutions which conduct banking activities in the territory of the Slovak Republic (hereinafter "bank"), other executive institutions for transfers of financial funds and postal enterprises shall accept euro banknotes and euro coins in monetary payments without restricting the nominal structure or total number of accepted euro banknotes and euro coins.3d Any legal person or natural person other than the National Bank of Slovakia and banks may refuse to accept valid coins even in the case the collector euro coins are involved in the payment.</p> <p>3c For example, Article106 of the Treaty establishing the European Community as amended; Articles16 and 44 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank; Council Regulation (EC) No 974/98 of 3May 1998 on the introduction of the euro as amended; Council Regulation (EC) No1103/97 of 17June 1997 on certain provisions relating to the introduction of the euro, as amended by Council Regulation (EC) No2595/2000 of 27November 2000; Council Regulation (EC) No975/98 of 3May 1998 on denominations and technical specifications of euro coins intended for circulation (OJ Special Edition Chapter 10 Volume 01) as amended by Council Regulation (EC) No423/1999 of 22February 1999 (OJ Special Edition Chapter 10 Volume 01), Decision of the European Central BankECB/2001/15 (2001/913/EC) of 6December 2001 on the issue of euro banknotes (OJ Special Edition Chapter 10 Volume03) as amended; Decision of the European Central BankECB/2003/4 (2003/205/EC) of 20March 2003 on the denominations, specifications, reproduction, exchange and withdrawal of euro banknotes (OJ Special Edition Chapter 10 Volume 03). 3d Article 11, the third sentence, of Council Regulation (EC) No 974/98 of 3May 1998 on</p>		
---	--	--

	the introduction of the euro as amended		
FI	<p>By virtue of the Consumer Protection Act of 1978 (Chapter 1/General provisions and Chapter 2/Regulation of marketing) consumers have to be informed clearly in advance about the means of payment including possible ceilings and/ or floors.</p> <p>In specific legislation (e.g. the Tenancy Act) provisions can be found according to which payment obligations can always be paid by credit transfer.</p>	<p>No.</p> <p>By virtue of the Consumer Protection Act of 1978 (Chapter 1/General provisions and Chapter 2/Regulation of marketing) consumers have to be informed clearly in advance about the means of payment including possible ceilings and/ or floors.</p>	<p>There is neither harmonised nor specific practice as regards the acceptance of high denomination banknotes. Ruling would be made <i>in casu</i> by virtue of general law.</p>

Table 3-Coin issues

	Limitations in the acceptance of the number of coins for one single payment beyond the one set by the EU regulation 974/88	Rules on the rounding of amounts to be paid in shops in order to limit the circulation of small denomination coins
BE	No	No
DE		
EL	In the Greek legislation, there are no other limitations in the acceptance of the number of coins for one single payment beyond the one set by Article 11 of EC Regulation 974/1998. However, the principle of good faith as embedded in Article 281 of the Greek Civil Code would apply also in this case.	There are no rules on the rounding of amounts to be paid in shops in order to limit the circulation of small denomination coins.
ES		
FR	The EU regulation 974 / 98 being of direct application in national law, the French law does not foresee a specific arrangement on this point and the regulation does not authorize Member States to foresee different measures.	No.
IE	There are no such limitations. The provision of the Council Regulation is reflected in Section 10 of the Economic and Monetary Union Act, 1998, which section also repealed previous statutory provisions limiting the acceptance of coins.	No
IT	No	No
CY	No	No
LU		
MT	There are no limitations beyond the one set by the EU regulation 974/88	None
NL	There are no limitations beyond the one set by the EU regulation 974/88.	When receiving a cash payment, retailers round the payable amount to the nearest multiple of 5 eurocents. However this optional but common practice must be clearly announced by a sticker on the shop front and another one at the

		checkout point. Rounding has made paying easier and reduced the overall cost of the cash payment system. The rounding rule does not apply to debit card and other non cash payments.
AT	<p>Yes. According to Article 8 para. 3 Austrian Coinage Act (Scheidemünzengesetz) there exists</p> <ul style="list-style-type: none"> – for the Central Bank of Austria (Oesterreichische Nationalbank) no limitation; – for the Republic of Austria, the Federal Provinces and Municipalities (Gebietskörperschaften) a limitation up to 100 pieces; – and for all other persons a limitation for coins up to 50 pieces and up to 10 pieces and a maximum amount of EUR 1.000 for coins dedicated to collection; <p>for one single payment.</p> <p>Article 8 para. 3 Austrian Coinage Act (Scheidemünzengesetz) states as follows:</p> <p><i>"In any single payment, coins not yet taken out of circulation in accordance with paragraph 1 must be accepted</i></p> <ol style="list-style-type: none"> <i>1. by the Central Bank of Austria (Österreichische Nationalbank) and the Austrian Mint (Münze Österreich Aktiengesellschaft) without limitation,</i> <i>2. by the Federal Provinces and Municipalities (Gebietskörperschaften), up to a quantity of one hundred pieces, and</i> <i>3. by all other persons, up to a quantity of fifty pieces in accordance with Article 11 of Council Regulation (EC) No 974/98 on the introduction of the euro (OJ L 139, 11.5.1998). However, coins in accordance with Article 12(1)(1) and (3) must be accepted only up to a quantity of ten pieces and a maximum total</i> 	No.

	<i>amount of EUR 1 000,“</i>	
PT	No. The limitation set forth in EU Regulation 974/98 is reproduced in Article 7(2) of Decree-Law No. 246/2007 of 26 June 2007.	No.
SI	No	No.
SK	No. There are no limitations in the acceptance of the number of coins for one single payment beyond the one set by the EU regulation 974/88 in the Slovak Republic.	No. There are no rules on the rounding of amounts to be paid in shops in order to limit the circulation of coins in the Slovak Republic.
FI	No.	By virtue of the Act on the Rounding of Eurodenominated Payments (890/2000) "Euro-denominated payments made in Finland shall be rounded as follows: 1) if the payment to be effected ends with one or two cents, it shall be rounded down to the nearest amount of cents divisible by ten, 2) if the payment to be effected ends with three or four cents, it shall be rounded up to the nearest amount of cents divisible by five, 3) if the payment to be effected ends with six or seven cents, it shall be rounded down to the nearest amount of cents divisible by five, 4) if the payment to be effected ends with eight or nine cents, it shall be rounded up to the nearest amount of cents divisible by ten. Payments in the amount of one and two cents shall not be rounded. A payment may be rounded as provided for in subsection 1 also when debiting it in writing or when recording it as debt in lieu of payment, or when paid for by a bank card or another payment card. Cent amounts shall not be rounded if so agreed on by the parties or if the payment is effected by credit transfer between accounts. When a payment is effected through a bank in another manner than credit transfer referred to in subsection 1, the bank may require that the amount of payment and payment voucher be rounded. In this case, if multiple payments are effected simultaneously, each one shall be rounded separately This Act will enter into force on 1 January 2002.

Table 4-Other means of payment

	Current national practice on charges on cash and non cash payments for the customers	National provisions on acceptability of surcharge for cash payment
BE	Article 3 of the Law of 14 July 1991 on trade practices and consumer information and protection provides that the selling price indicated by a trader must be the total price to be paid by the consumer, including VAT, all other taxes and other costs charged to the consumer.	The above-mentioned memorandum published in 2005 by the Ministry of Economic Affairs on the refusal by traders of euro banknotes in payment of sums of money considers that the legal tender of euro banknotes and coins effectively means that charging a consumer additional costs for a payment in cash would infringe Article 3 of the Law of 14 July 1991 on trade practices and consumer information and protection. This soft law rule has been widely followed by all interested parties too.
DE	Generally, no different pricing occurs.	There are currently no public law regulations pertaining to this issue. Parties may agree to such a surcharge in contracts under civil law.
EL	Formally, the pricing for cash and non cash payments is the same. However, in practice, upon request, a small reduction (corresponding to the retailer's cost for the use of cards) can be made for payments in cash.	None
ES	No charge on cash or non cash payments for the customers.	No
FR	No charge on cash; for the other means of payment, France should transpose the Directive of payment services to avoid the surcharging of scriptural payments	No. According to the EU law on legal tender of banknotes and coins, the cash surcharging is considered as illegal.
IE	This is a matter of contract between a buyer and seller of goods or services	This is a matter of contract between a buyer and seller of goods or services and it is not prohibited by Irish law
IT	As regards on-street shops, prices do not differ depending upon the means of payment. It may happen that non-cash payments are not admitted under a certain threshold (e.g. € 20-30), because of the fees that the retailer has to pay to the provider of the non-cash service. On-line shops vary their practices (and the amount of fees) as regards the different means of payment (e.g. credit card, pre-paid cards, Post Office card, Paypal, check, giro-payment, payment at the moment of delivering, etc). When they have an on-street office, they usually accept cash payment without	No a surcharge would circumvent Article 1277 of the Civil Code (see the answer above, under N°. 1).

	charging any fee.	
CY	<p>No charges are imposed on cash and non-cash payments for customers.</p> <p>Concerning the transposition of the PSD into national law, please note that in Cyprus, the draft law concerning payment services makes use of the provision of Article 52(3) (second sentence) of the PSD and forbids the payee from surcharging for the use of payment card or similar device, or telecommunication, digital or IT device (article 46(2) of the draft law).</p>	None
LU	<p>For cash payments, to our knowledge no fees are charged.</p> <p>Concerning non cash payments retailers are charged a fee per transaction when offering a payment facility different than cash (credit/debit cards)</p>	None to our knowledge.
MT	There are currently no charges imposed on cash and non-cash payments for the customers.	The law does not at present prohibit a surcharge for cash payments.
NL	<p>In the Netherlands this issue is particularly linked to the discussion on direct and transparent charging and the desired efficiency in payments. Therefore, this issue is also influenced by article 52 of the Payment Services Directive.</p> <p>As cash can for certain payments be an inefficient payment method, market participants in the Netherlands constantly search for methods to reduce the number of cash payments. However, it is not common to charge directly for cash payments, neither for payments at retailers or for cash withdrawals at ATM's.</p> <p>The Netherlands is in favour of transparent pricing of payments and payment products and would not discourage initiatives in that field for reasons of economic efficiency.</p> <p>For other means of payment than cash and debit card transactions it is quite common in the Netherlands to charge for a payment. For business to business payments, there is nearly always a charge for a payment.</p> <p>For example, providers of certain goods or services (for example utility</p>	There are no specific provisions on this matter. This is a matter of contract, that is also confirmed in a court decision (Court of Appeal 3 February 1994), in which the court decided that a surcharge on cash payment valid.

	<p>companies) or retailers sometimes demand a small fee form consumers for the use of a certain payment method. However, there is always a 'free payment method' without any extra charges.</p> <p>For example, the direct debit is a very efficient payment method in the Netherlands while there are also typical Dutch payment methods with paper slips and money transfers that are much more expensive for a provider of goods and services. If the provider wants to charge the customer (consumer) for the use of an expensive payment method, he is allowed to do so. There is not any regulation on this point.</p> <p>Another example is the use of credit cards. Particularly on the internet, it is quite common to charge for the use of a credit card instead of other ways of electronic payment on the internet. Also at points of sale the charging of the use of credit cards is not uncommon.</p>	
AT	Normally there exist no price differences between cash and non cash payments for customers	A surcharge for cash payments would not be legally acceptable in Austria.
PT	The general practice consists of accepting both means of payment (cash and non-cash) without any surcharge.	In principle such a practice would be considered as unlawful as it would undermine the legal tender status of euro banknotes and coins. However, there is no case law or a public law decision on this issue.
SI	In Slovenia prices in case of cash and cashless payments are basically the same, however retailers sometimes offer discounts on cash payments.	There are no special provisions on surcharge for cash payments, therefore we believe that considering general principles of civil law and according to provisions of Code of Obligations, that kind of surcharge theoretically would be le legally accepted (justification would probably be in higher manipulative expenses).
SK	There is no surcharge for cash or non cash payments in the Slovak Republic. However, paying of specific credit card fees is applied in practice.	No.
FI	No.	Yes, if agreed. By virtue of the Consumer Protection Act of 1978 (Chapter 1/General provisions and Chapter 2/Regulation of marketing) consumers have to be informed clearly in advance about the means of payment including possible ceilings and /or floors.

Table 5-The importance of legal tender for national security

	National IP law provisions, related to, compulsory licensing with regards to patents critical for e.g. national security, either prior to patent grant or after allegation of infringement	National IP law provisions, related to the exclusion of preliminary injunctions with regards to infringement proceedings of said patents.	Application of the above referred provisions to legal tender banknotes and coins
BE	No	No	-
DE	<p>Under section 13 of the Patentgesetz (Patent Act), the effect of a patent can be restricted for reasons of social welfare or of the security of the state. To this end, the federal government can decide that an invention be used for social welfare. Moreover, it can be decided that the effect of a patent does not extend to an exploitation of an invention in the interest of the security of the Federal Republic.</p> <p>Under section 24 of the Patent Act, a compulsory licence can be granted, if the potential licensee has tried in vain to receive a licence from the patent holder and if the granting of the licence is required by public interests. Under the same conditions, a compulsory licence can also be granted in case a patent holder cannot exploit a more recent patent without infringing the prior patent, if the new invention features important technical progress of substantial economic significance. Furthermore, a compulsory licence can be granted, if the invention is not exclusively or not mainly exploited within Germany, in order to allow for a sufficient supply of the invention in Germany.</p>	None	<p>It is up to the competent authorities or courts to decide whether sections 13 and/</p> <p>or 24 of the Patent Act apply.</p>
EL	Only for reasons of national defence or public security, against a fair royalty (Art. 14 L. 1733/1987)	No.	It would be very difficult to apply the regime described in Article 14 of Law 1733/1987, to banknotes and coins.

	<p>Article 14</p> <p>Exploitation licence for the public sector</p> <p>1. For urgent reasons of public health or national security, it is possible, by virtue of a reasoned opinion of the Minister for Industry, Energy and Technology and any other responsible Ministers, to issue a licence to public bodies to exploit an invention in Greece, as long as the invention is not already used for production in Greece or the production of these products is not enough to meet domestic demand.</p> <p>2. Before the issuing of the relevant decision, it is up to the patent holder and anyone else in a position to provide useful advice, to express their opinion.</p> <p>3. The same decision, once the OBI has been consulted, sets the amount of compensation for the patent holder and how it is to be paid. The amount of the compensation shall be set in line with the extent of the industrial use of the invention. In the event of an objection by the holder of the patent to the amount of the compensation, the compensation shall be set by the local single-member court of first instance, according to the procedure for an interim measure.</p>		
<p>ES</p>	<p>Yes, for reasons of public interest, the Government may at any time make a patent application or a patent already granted subject to the grant of compulsory licenses, acting in that respect by Royal Decree (Article 90 Law 11/1986, of March 20, 1986, on Patents). Reasons of public interest shall be deemed to exist when the initiation, increase or generalization of working of the invention, or</p>	<p>No specific provision</p>	<p>No</p>

	<p>improvement of the conditions in which it is being worked, are of paramount importance for public health or national defense.</p> <p>Reasons of public interest shall also be deemed to exist when failure to work or the insufficient quality or quantity of working leads to a serious prejudice for Spain's economic or technological development.</p>		
FR	<p>Yes, at all times, for reasons of public defence.</p> <p>Article L613-19 Intellectual property code :</p> <p>“The State may at any time obtain ex officio in order to meet its defense requirements a license to work an invention that is the subject of a patent application or a patent, whether the working is to be done by the State itself or on its behalf. The ex officio license shall be granted at the request of the Minister responsible for defense by order of the Minister responsible for industrial property. The order shall lay down the conditions of the license, but excluding those relating to the amount of royalties to be paid in consideration thereof. The license shall take effect on the date of the request for an ex officio license. Failing amicable agreement, the amount of the royalties shall be laid down by the First Instance Court. Proceedings at all levels of jurisdiction shall take place in court chambers”.</p>	No.	No specific provision.
IE	<p>Not specifically. Section 70 to 75 of the Patents Act 1992 as amended by Sections 19 to 23 of the Patents (Amendment) Act 2006 deal with compulsory licensing. The provisions largely reflect our European Patent Convention and TRIPS obligations.</p> <p>Section 21(b) of latter Act allows for setting aside</p>		

	<p>statements otherwise required to support applications for compulsory licences in cases “<i>where there exists a national emergency or other circumstances of extreme urgency</i>” or “<i>in the case of an application for a licence for public non-commercial use</i>”.</p> <p><u>However</u>, the circumstances in which such compulsory licences can be sought at Section 19 of the Patents (Amendment) Act 2006 do <u>not</u> otherwise include reference to national security or emergency situations.</p>		
IT	<p>Yes. It is provided an expropriation procedure for the IPRs that are considered useful for the society. Article 194 of the Legislative Decree 10 February 2005, N°. 30, provides for an indemnity to be paid for the expropriation; the amount of the indemnity should be agreed among the parties but, if an agreement is not reached, it shall be determined by an Arbitration Panel. The Panel shall fix the amount of the indemnity with equity, taking into account the loss of the competitive advantage that would have derived from the expropriated IPR. The Panel’s decision can be challenged in the Specialized Section of the Civil Tribunal of Rome.</p>	<p>No. The relevance of the public/general interest shall be determined, evaluated and balanced against the private interest of the plaintiff by the Judge asked for the preliminary injunction.</p>	<p>The provisions of the first question could be applied also to IPRs relevant for the production of banknotes and coins.</p>
CY	<p>Yes, at all times, for reasons of national defence or public security, against a fair royalty (Art. 55 of Patent Law – 16(I)/1998 of 6.4.1998)</p>	<p>No</p>	<p>The provisions of the first question do not seem to apply to banknotes and coins. There is no case law on this issue</p>
LU	<p>Article 59 of the law of 20 July 1992 modifying the regime applicable to patents as amended foresees that any person may obtain a compulsory license if after a period of 3 years; the owner of that patent has not started to work the patent or has not operated the patented invention. The same provision applies in case the operation has been stopped. The request for a compulsory license has to be addressed before</p>		<p>Articles 4 and 6 of the law of 20 July 1992 modifying the regime applicable to patents as amended define what may be submitted for patent. According to these provisions inventions incorporated to legal tender banknotes and coins could be protected.</p> <p>For the protection of the copyright a different law</p>

<p>court but it cannot result in a exclusive license.</p> <p>Article 63 of the law of 20 July 1992 modifying the regime applicable to patents as amended foresees the possibility to apply to the patent a regime of automatic license if the owner of the patent is not willing to grant on a voluntary basis a license and according to reasonable commercial conditions and modalities. A grand-ducal order has to declare the invention's implementation as of public interest.</p> <p>In both cases no reference is made to national security.</p> <p>Article 1 of the law of 8 July 1967 concerning the disclosure and the implementation of inventions and trade secrets related to the defence of the territory or to the State security forbids the disclosure of inventions and trade secrets if such a disclosure is contrary to the interests of the defence of the territory or to the State security. The competent Ministers may temporarily define and control the operation conditions of such an invention.</p> <p><i>Law of 8 July 1967 concerning the disclosure and implementation of inventions and trade secrets related to the defence of the territory or to State security:</i></p> <p>Article 1 <i>It is prohibited to disclose inventions and trade secrets where this is contrary to the interests of the defence of the territory or the security of the State of Luxembourg or any State with which the Grand Duchy of Luxembourg has entered into a regional common defence agreement. The perpetrator of the disclosure and the party that caused it by his/her negligence shall be subject to the penalties laid down in Article 13 if it is established</i></p>		<p>exists (Law of 18 April 2001 on the copyrights, similar rights and databases as amended by the law of 18 April 2004).</p> <p><i>Article 4 – Patentable inventions</i></p> <p><i>1. Inventions which are new, which involve an inventive step and which are susceptible of industrial application shall be patentable even if they concern a product consisting of or containing biological material or a process by means of which biological material is produced, processed or used.</i></p> <p>(...)</p> <p><i>2. The following are not considered to be inventions within the meaning of paragraph 1: a) discoveries, scientific theories and mathematical methods; b) aesthetic creations; c) schemes, rules and methods for performing mental acts, playing games or doing business, in addition to computer programmes; d) presentation of information.</i></p> <p><i>Article 6 – Novelty</i></p> <p><i>1. An invention shall be considered to be new if it does not form part of the state of the art. 2. The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of filing of the patent application. 3. Additionally, the content, as filed, of Luxembourg patent applications and European or international patent applications referring to Luxembourg, of which the dates of filing are prior to the date referred to in paragraph 2 and which were published on or after that date, shall be considered as</i></p>
---	--	--

<p><i>that they could not fail to be aware that it was contrary to the interests referred to in the previous paragraph.</i></p> <p>Article 2 <i>Without prejudice to the implementation of Article 1, the ministers for the national economy and energy, industrial property and the armed forces may jointly declare that the disclosure of an invention or a state secret is contrary to the interests referred to in the first paragraph of Article 1 and that it is forbidden for a period which they shall determine.</i></p> <p>Article 3 <i>Where they consider it necessary for the purposes of ensuring the defence of the territory or the security of the State or a State with which the Grand Duchy of Luxembourg has entered into a regional common defence agreement, the ministers designated in the previous article may, acting jointly, temporarily determine and supervise the conditions for the use of inventions and the application of trade secrets.</i></p> <p><i>If it is established that those measures do not meet the requirements of the defence of the territory or State security, they may, by means of a reasoned decision, either temporarily prohibit the use of inventions or the application of trade secrets, compel the interested party to transfer the licences to third parties authorised by the State, or compel the third party to transfer to it full information about an unpatented invention or trade secret.</i></p> <p><i>The ministers may also obtain for the State the licence for a patent and complete information on an unpatented invention or trade secret by means of contracts entered into freely.</i></p>		<p><i>comprised in the state of the art.</i></p>
---	--	--

	<p><i>Law of 20 July 1992 amending the rules applicable to patents, as amended:</i></p> <p><i>Article 59 – Compulsory licence</i></p> <p><i>1. Any person governed by public or private law may, after expiry of three years following granting of a patent or four years from the date of lodging of a patent application, whichever is later, obtain a compulsory licence for that patent, under the conditions laid down in the following articles if, at the time of the request, and in the absence of legitimate grounds of excuse, the owner of the patent or his/her successor in title: a) has not begun to use the invention covered by the patent or made genuine and serious preparations to do so on the territory of the Grand Duchy or another signatory State of the Agreement establishing the WTO; b) has not used the invention covered by the patent in a manner sufficient to supply the Luxembourg market. 2. The same applies where use has not been made of the invention for more than three years.</i></p> <p><i>Article 63 – Automatic licence</i></p> <p><i>1. A patent is subject to an automatic licence where a Grand Ducal Order, following a compulsory opinion from the Council of State, declares that the implementation of the patent is in the public interest. Except in emergencies, that order may not be issued unless it is established that the holder of the patent is not willing to grant the licence voluntarily under reasonable commercial conditions and rules.</i></p>		
MT	Maltese legislation on Intellectual Property Rights (IPR) does not contain provisions relating to the compulsory licensing with regard to patents critical	None	

	for national security and neither are preliminary injunctions with regards to infringement proceedings of such patents excluded.		
NL	Yes, in the Patents Act (section 57, 58 and 59) compulsory licensing is possible for the public interest, in case the license is not sufficiently used by the patent holder or when the patent is needed for use of later inventions. The public interest in this matter is to be perceived in the broadest sense. Compulsory licensing is only possible in the situation that no reasonable license agreement with the patent holder could be reached and the patent holder will by court be granted a fair compensation. Also for defence reasons of the Kingdom compulsory licensing is possible.	Section 58a Patents Act provides that a granted compulsory license is non-exclusive and can be withdrawn in case of changed circumstances on which the compulsory licensing was based.	The competent authorities to decide whether or not the Sections of the Patents Act apply on a specific case are the Government or the court.
AT	Yes, compulsory licenses exist with regards to patents which are critical for public interests. Article 36 para. 5 Austrian Patent Act states: <i>“If the granting of a license is necessary for the sake of the public interest, everybody has the right to acquire a non-exclusive license for the use in the course of his business. The public administration has the same right, even if it does not actually use it. “</i>		
PT	According to Articles 107(1)(c) and 110 of the Industrial Property Code, compulsory licences may be granted for public interest reasons which arise if the commencement, increase or generalisation of the exploitation of the invention, or an improvement of the conditions of its exploitation, is of vital importance to public health or national defence. Public interest reasons are also considered to subsist if failure to exploit or insufficient quality or quantity of exploitation is highly detrimental to the country's	There is no exclusion of preliminary injunctions with regards to infringement proceedings to patents compulsorily granted for public interest reasons.	Compulsory licensing for public interest reasons under Portuguese law does not seem to apply to legal tender banknotes and coins, since only public health, national defence or the country's economic or technological development are mentioned. There is however no case law or a public law decision on this issue

	economic or technological development. The government shall be responsible for granting a licence in the public interest.		
SI	<p>Articles 125, 126 and 127 of Industrial Property Act (Published in the Official Gazette of Republic of Slovenia Nos 45/01, 96/02, 37/04, 20/06 and 51/06) state:</p> <p>"Article 125</p> <p>Compulsory licences</p> <p>(1) The court may decide that a third party or the Government of the Republic of Slovenia exploit the invention without the authorisation of the owner of the patent:</p> <p>(a) where the public interest concerning, in particular, national security, nutrition, health or the development of other vital sectors of the national economy so requires, or</p> <p>(b) where the court has determined that the owner of the patent or his licensee abuses the patent rights, in particular where the manner of exploitation, contrary to the adopted regulations, restrains competition.</p> <p>(2) The court shall grant compulsory licences under paragraph (1) with regard to given circumstances and after hearing the owner of the patent.</p> <p>(3) Compulsory licences under paragraph (1) shall be granted provided that the person filing the request proves that he has made efforts to conclude a licence contract with the owner of the patent on reasonable</p>	No specific provisions	No specific provisions

<p>commercial terms and that such efforts failed to succeed within a reasonable period of time.</p> <p>(4) Paragraph (3) shall not apply if a state of war or similar state of emergency has been declared. Nevertheless, the owner of the patent shall be notified of the decision of the court as soon as reasonably practicable.</p> <p>Article 126</p> <p>Conditions for granting compulsory licences</p> <p>(1) Compulsory licences under Article 125 shall be granted under the following conditions:</p> <p>(a) scope and duration shall be limited with regard to their purpose;</p> <p>(b) they shall be non-exclusive;</p> <p>(c) they shall be non-transferable, with the exception of the part of the enterprise or business of the licence owner to which the licence refers;</p> <p>(d) they shall be granted primarily for the supply of the market of the Republic of Slovenia.</p> <p>(2) Where a patent, hereinafter referred to as “the second patent”, cannot be exploited without infringing another patent, hereinafter referred to as “the first patent”, the following conditions, in addition to those of Article 125 and paragraph (1) above, for</p> <p>the grant of compulsory licence in respect of the first patent shall be met:</p>		
---	--	--

	<p>(a) the invention claimed in the second patent shall involve a technical advance of considerable economic significance compared to the invention claimed in the first patent;</p> <p>(b) the owner of the first patent shall under reasonable conditions be entitled to a crosslicence to use the invention claimed in the second patent;</p> <p>(c) the use authorised in respect of the first patent shall not be transferable except with the simultaneous transfer of the second patent.</p> <p>(3) The court shall decide that a compulsory licence expire if the circumstances which led to it being granted have ceased to exist and are unlikely to recur.</p> <p>Article 127</p> <p>Remuneration for compulsory licences</p> <p>(1) Owners of patents under a compulsory licence shall be entitled to remuneration.</p> <p>(2) The amount of the remuneration shall be determined with regard to the circumstances of each case and taking into account the economic value of the compulsory licence."</p>		
<p>SK</p>	<p>Yes, the Law No. 435/2001. Coll. on Patents and Additional Protective Certificates has introduced the forced license which can be granted in the case of a threat of important public interest.</p> <p>"Compulsory licence</p>	<p>Yes, there is Article 34 of the Law on Patents and Additional Protective Certificates dealing with preliminary injunctions.</p> <p>"§ 34</p> <p>(1) In protecting the rights hereunder, the</p>	<p>Theoretically yes. The court may grant a compulsory license on the ground of an assessment of a received petition.</p>

<p>Section 27</p> <p>(1) Upon a petition, the court may grant a compulsory licence to whoever proves the capacity to use, in the territory of the Slovak Republic, an invention which is the subject of a granted patent on the condition that</p> <p>a) four years have elapsed from the date the application was filed, or three years from the date the patent was granted, whichever is the latest;</p> <p>b) the petitioner for the compulsory licence, before filing a petition, gave the patent holder a sound offer for concluding a licencing agreement, and such offer was not accepted by the patent holder within three months of the offer date; and</p> <p>c) the invention is not used, without reasonable excuse from the side of the patent holder, on the territory of the Slovak Republic, or is used insufficiently, and the subject of the patented invention as a product is not supplied to the market of the Slovak Republic in a satisfactory amount. A reasonable excuse is presumed not to exist, until the contrary is proved.</p> <p>(2) A compulsory licence may only be granted as a non-exclusive licence, and its duration and scope of validity shall be limited to the purpose for which it is granted, in order to meet preferentially the needs of the local market.</p> <p>(4) Where an important public interest is at stake, a compulsory licence may be granted notwithstanding paragraph 1 (a) and (b).</p>	<p>court may grant an injunction 14) containing the same obligations as those specified in the judgment on merits, where delay might cause proprietary or non-proprietary loss to the beneficiary which is difficult to remedy.</p> <p>(2) Within a decision on such an injunction, the court may place an obligation on the petitioner, also without a petition being filed, to make a reasonable monetary security deposit, or it may make the effectiveness of the decision subject to the satisfaction of the imposed obligation. In deciding on the amount of the monetary security deposit, the court shall take into account the extent of proprietary or non-proprietary loss that may be incurred by a counterparty, as well as the proprietary possibilities of the petitioner, and the imposing of the obligation to make a monetary security deposit must not be a significant obstacle to the effective application of the law.</p> <p>(3) Upon a petition, the court may decide on the distribution of the monetary security deposit to the counterparty as compensation for proprietary loss, or as satisfaction for a non-proprietary loss directly caused by the execution of an injunction granted without reasonable excuse.</p> <p>(4) If the compensation or satisfaction is not claimed in court, or if no agreement is reached between the parties on the use of the security deposit, within a period of six months after the identification of the loss referred to in paragraph 3, the court shall return the security deposit.”</p>	
---	--	--

	<p>(8) Transfer or devolution of the title of the compulsory licensee is possible exclusively as a part of the transfer or devolution of an undertaking or its part, within which the invention is used on the basis of the compulsory licence.</p> <p>(9) The compulsory licensee may waive the rights under the compulsory license by written notice delivered to the authority. The waiver of the right shall take effect on the date of receipt of the notice by the authority, or on such a later date specified in the notice as the date on which the compulsory licensee waives his rights.”</p>		
FI	No	No	No