

ESTA Update



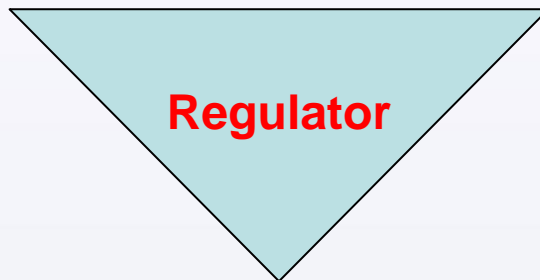
Thierry Lebeaux

Secretary General

Prague, 3 June 2024

Access

(infrastructure
ATMs)



Acceptance

(Legal tender vs
contractual freedom)

Change money

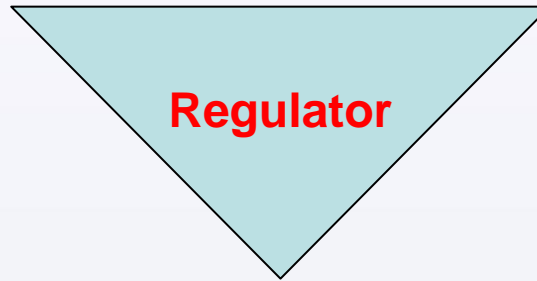
(Local supply
Bank branches)

28 June 2023:

**Publication by the Commission of a draft
regulation on legal tender**

Access

(infrastructure
ATMs)



Acceptance

(Legal tender vs
contractual freedom)

Change money

(Local supply
Bank branches)

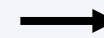
Covers "mandatory" acceptance... and access!

▪

Veni, vidi,... but not yet vici!



Ex ante restrictions not prohibited



“monitored”

Access left to MS appreciation



“monitored”, no provision on the infrastructure

Stranded in Council



“Contractual freedom”

Legal tender

LT: exclusive EU competence
(cf. AG's opinion, C-423/19,)



Specific legal basis – Art 128 TFEU



Regulation, not a directive
(for uniform implementation)

Contractual freedom

No specific legal basis
in EU law
(none cited by the AG & largely
ignored by the Court)

+

EU law always takes
precedence over national laws

=

Contractual freedom ***not*** relevant
(as legal tender has a
much higher legal status)

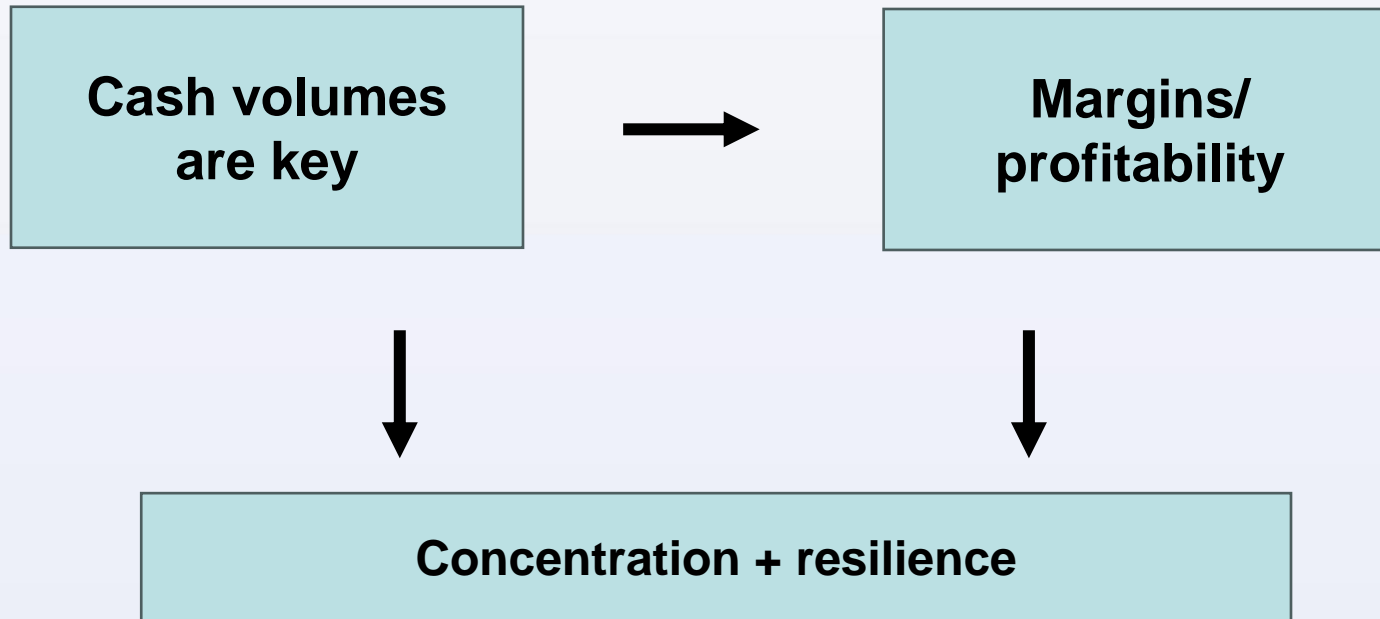
The perfect proposal... needed for cash

- All the lessons of predatory competition against cash have been learned
- Strong imbalances against cash in the proposal (legal tender, distribution channels)
- Explanatory memorandum: a thorough inventory of all the dangers in doing it!
- Key issue: a digital central bank currency, what for ?

Purely cash transactions are not covered in the scope

- Look at what business companies are doing rather than what they are
- The PSD2 exclusion of CIT has disappeared, (*“stating the obvious”* according to the Commission legal service)
- Provided that the cash held by CIT doesn't come into their ownership, CIT is out of the scope.
- ESTA cash group has analysed that the proposals have limited relevance to CIT.

Consultation has achieved two main recognitions



Concentration is a *consequence*, not a *precursor*, of a critical cash market situation

“CITs leaving a concentrated market may cause damage, possibly even undermining public trust in cash” (ECB concentration report)

Wrong premises:

The threats on cash are not on logistics (CIT) but on infrastructure

- Gaps in supply (banks branches, ATMs, reduced cash services, refusal to accept wholesale cash...)
- By the time this translates into the CIT sector, it's too late!
- Addressing cross border market failures: a question of capacity and... regulation

The real question behind the ECB survey:

Need a cash infrastructure, but for how long ?
(ie “how long until cash is properly replaced”?)



Piero Cipollone, ECB

“The technology to pay in cash is going to disappear “

‘(ECON hearing, 14,02,2024)

And I’m fully committed to cash...

Letter to ESTA, 4,03,24



4 Pillar-strategy

- Critical stakeholders – monetary authorities, retailers, consumers organisations...
- Implementing a smooth cash trilogy
- Driving the political debate on cash
- ESTA as a thought leader on cash issues