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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 368 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the provision of digital euro services by payment services providers incorporated in Member States whose currency is not the euro and amending Regulation (EU) 2021/1230 of the European Parliament and the Council

Delegations will find attached document COM(2023) 368 final.

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2023/0211 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the provision of digital euro services by payment services providers incorporated in Member States whose currency is not the euro and amending Regulation (EU) 2021/1230 of the European Parliament and the Council

(Text with EEA relevance)

{SEC(2023) 257 final} - {SWD(2023) 233 final} - {SWD(2023) 234 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

This proposal complements Regulation (EU) No (XXX/XXX) establishing the digital euro with respect to digital euro services provided by payment services providers incorporated in a Member States whose currency is not the euro. Regulation (XXX/XXX) establishing the digital euro is addressed to Member States whose currency is the euro. To ensure that the provision of digital euro services by payment service providers incorporated in a Member State whose currency is not the euro in the euro area is adequately supervised by competent authorities of the Member State whose currency is not the euro, it is necessary to lay down rules that will apply to these payment service providers. Rules governing the accesss to and use of the digital euro in Member States whose currency is not the euro are contained in Article 18 of Regulation (EU) No (XXX/XXX) on the establishment of the digital euro.

• Consistency with existing policy provisions in the policy area

This Regulation is consistent with Directive (EU) 2015/2366 of the European Parliament and of the Council of 15 November 2015 on payment services in the internal market, as amended by Directive (EU) XXX/23. The Payment Services Directive provides for harmonised rules governing the free provision of payment services across the Union and should also apply to payment transaction in digital euro. In particular, this Regulation will allow payment services providers incorporated in a Member States whose currency is not the euro to offer to residents of the euro area digital euro payment services together with other payment or banking services, by means of free provision of services or free establishment.

• Consistency with other Union policies

This Regulation is necessary to avoid any fragmentation within the internal market, as all EU payment services providers, irrespective of where they have been licensed, should be in a position to provide similar services to best serve businesses and people.

This Regulation is consistent with the Digital Finance and Retail Payment Strategies[1] of the Commission. That communication emphasised that a digital euro would act as a catalyst for innovation in payments, finance and commerce in the context of ongoing efforts to reduce the fragmentation of the EU retail payments market. Payment services providers wherever incorporated in the Union should therefore distribute digital euro services so that a high level of competition across payment services providers is ensured.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

This Regulation is based on Article 114 TFUE, the same as Directive (EU) 2015/2366. By governing the distribution of digital euro services by payment services providers incorporated in a Member States whose currency is not the euro, this proposal will secure the free movement of payment services across the Union. This proposal will ensure that payment services Providers wherever incorporated in the Union would be subject to similar

[1] Communication from the Commission to the European Parliament, the Council and the Committee of the Regions on a Digital Finance Strategy for the EU (COM/2020/591 final)

requirements and supervisory standards which is necessary for the purposes of safeguarding financial stability and guaranteeing a level playing field across payment services providers.

- **Subsidiarity**

This Regulation would make applicable the relevant provisions of the Regulation (EU) No XX on the establishment of the digital euro to PSPs incorporated in Member States whose currency is not the euro. Regulation (EU) No XX on the establishment of the digital euro is based on Article 133 which is an exclusive competence of the Union.

In addition, given that the objective pursued by the proposed measures aim at ensuring that existing Union legislation, based on Article 114 TFUE, will be applicable with respect to the provision of digital euro services by payment services providers incorporated in Member States whose currency is not the euro, this can be best achieved at EU level rather than by different national initiatives.

- **Proportionality**

This Regulation is necessary to prevent obstacles in the internal market, between payment services providers incorporated within and outside of the euro area. The obligations contained in this Regulation are similar to the ones laid down in the Regulation establishing the digital euro, and are in line with the principle of proportionality for the reasons set out in the explanatory memorandum accompanying that proposal.

- **Choice of the instrument**

A Regulation is the appropriate instrument to contribute to the creation of a single rulebook, having general application and being binding in its entirety and directly applicable in all the Member States, thus removing the possibility of differences in application in the different Member States.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

This proposal is based on the ex-post evaluations, stakeholder consultations and impact assessment carried out in the context of the preparation of the proposal for a Regulation on the establishment of the digital euro. The impact assessment of the proposal for a Regulation on the establishment of the digital euro was submitted to the Regulatory Scrutiny Board (RSB) on 14 October 2022 and approved on 25 April 2023.

For consistency reasons with the Payment Services Directive, all EU payment services providers should have the right to distribute digital euro payment service in the euro area. This will further contribute to an innovative and competitive retail payment market.

In terms of fundamental rights, this proposal specifically ensures that the payment services providers incorporated in a Member States whose currency is not the euro benefit from the freedom to conduct a business (provision of digital euro services) under Article 16 of the Charter of Fundamental Rights of the European Union. Respect of other fundamental rights are further specified in the explanatory memorandum of the proposal for a Regulation on the establishment of the digital euro.

4. BUDGETARY IMPLICATIONS

This Regulation has no budgetary implications.

5. OTHER ELEMENTS

• Implementation plans and monitoring, evaluation and reporting arrangements

The objective of ensuring that the central bank issued money, the euro, can support the EU by meeting the payment needs in the digital age can be monitored on an ongoing basis based on data from the payment services providers, merchants and the European Central Bank. The total number and volume of retail payments in digital euro and their relative share as compared to other payment means could be the main indicators in monitoring the use of digital euro in the digitalized economy of the EU.

The proposal includes a general plan for monitoring and evaluating the impact on the specific objectives, requiring the Commission to carry out a first review three years after the date of application of the Regulation (and every three years thereafter), and to report to the European Parliament and the Council on its main findings. The review is to be conducted in line with the Commission's Better Regulation Guidelines.

• Detailed explanation of the specific provisions of the proposal

Subject matter (Article 1)

The purpose of this Regulation is to lay down rules concerning the specific obligations that payment service providers incorporated in Member States whose currency is not the euro shall respect when distributing the digital euro and the supervision and enforcement of those obligations.

Distribution of the digital euro (Article 3)

Without prejudice to Chapter V of the Regulation (EU) No (XXX/XXX) on the establishment of the digital euro governing the access and use of the digital euro outside the euro area, the provision of digital euro services by payment service providers incorporated in Member States whose currency is not the euro should be primarily aimed to (i) natural or legal persons residing or established in the Member States whose currency is the euro, (ii) natural or legal persons who opened a digital euro account at the time they resided or were established in the Member States whose currency is the euro, but no longer reside or are established in such Member States, (iii) visitors subject to the conditions laid down in Article 20 of the Regulation establishing the digital euro.

Payment service providers authorised outside the euro area may provide those services by means of free establishment or free provisions of services under Directive 2015/2366.

Applicable law and competent authorities (Articles 4 to 6)

Article 5 clarifies that Directive (EU) 2015/2366 of the European Parliament and of the Council, of 25 November 2015, on payment services in the internal market, as amended by Directive (EU) [*please insert reference - proposal for a Directive of the European Parliament and of the Council on payment services and electronic money services in the internal market amending Directive 98/26/EC and repealing Directives 2015/2366/EU and 2009/110/EC - COM(2023) 366 final*] applies to the digital euro. That Directive provides that central bank money issued for retail use, and not only banknotes and coins should be considered as 'funds' within the meaning of that Directive. Likewise, the anti-money laundering and counter-terrorism financing (AML/CFT) framework laid down in Directive (EU) 2015/849 of the European Parliament and of the Council, of 20 May 2015, on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and Regulation

(EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds should apply with respect to the digital euro.

Payment services providers incorporated in Member States whose currency is not euro may distribute the digital euro, subject to the supervision and sanction regimes of Member States whose currency is not the euro.

While competent authorities under Directive 2015/2366 and Directive 2015/849 would be responsible for supervising and enforcing any obligations laid down in these Union Acts, based on Article 114 TFUE, the same competent authorities would also be responsible for ensuring respect of the relevant provisions of the Regulation establishing the digital euro as specified under this Regulation.

Supervisory arrangements between the competent authorities of the home Member State and the competent authorities of the host Member States laid down under Directive 2015/2366 and Directive 2015/849 should also apply with respect to the digital euro.

Final provisions (Articles 8)

The Regulation should enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

2023/0211 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the provision of digital euro services by payment services providers incorporated in Member States whose currency is not the euro and amending Regulation (EU) 2021/1230 of the European Parliament and the Council

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank[2],

Having regard to the opinion of the European Economic and Social Committee[3],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) The Commission emphasised in the Digital Finance and Retail Payment Strategies[4] of September 2020 that a digital euro, as a retail central bank digital currency, would act as a catalyst for innovation in payments, finance and commerce in the context of ongoing efforts to reduce the fragmentation of the EU retail payments market.

(2) Regulation (EU) [*please insert reference – proposal for a Regulation of the European Parliament and the Council on the establishment of the digital euro – COM(2023) 369 final*] on the establishment of the digital euro establishes the digital euro and lays down rules concerning it, in particular as regards its legal tender status, distribution, use and essential features, with a view to adapting the euro to technological changes and to ensuring its use as a single currency.

(3) It is essential to ensure that all payment services providers, whether incorporated in Member States whose currency is the euro or in Member States whose currency is not the euro, may distribute the digital euro and therefore exercise their freedom to provide services in the Union. The provision of digital euro payment service by all payment services providers would contribute to a high level of innovation, facilitate payments and increase competition across the Union and is necessary to safeguard the integrity of the single market. All payment services providers incorporated in the

[2] OJ C [...], [...], p. [...].

[3] OJ C […], […], p. […].

[4] Communication from the Commission to the European Parliament, the Council and the Committee of the Regions on a Digital Finance Strategy for the EU (COM/2020/591 final)

Union should therefore be in a position to distribute digital euro payment services under the same conditions to natural or legal persons residing or established in the Member States whose currency is the euro, to natural or legal persons who opened a digital euro account at the time they resided or were established in the Member States whose currency is the euro, but no longer reside or are established in such Member States, and to visitors in the euro area. Payment services providers incorporated in Member States whose currency is not the euro should also be in a position to distribute the digital euro to any other natural or legal persons residing or established in Member States whose currency is not the euro and in other countries of the European Economic Area or any third countries subject to the conditions laid down in the Regulation (EU) *[please insert reference – proposal for a Regulation of the European Parliament and the Council on the establishment of the digital euro – COM(2023) 369 final]*.

(4) Payment services providers incorporated in Member States whose currency is not the euro should apply the same rules as payment services providers incorporated in Member States whose currency is the euro for the purposes of distributing the digital euro. That is essential in order to ensure that the distribution of the digital euro by all payment services providers incorporated in the Union takes place in a uniform manner.

(5) The provision of digital euro payment services by payment services providers incorporated in Member States whose currency is not the euro, should be subject to the same supervisory standards than those applied to payment services providers incorporated in Member States whose currency is the euro. For that purpose, the relevant provisions of Directive (EU) 2015/2366 of the European Parliament and the Council[5], as replaced by Directive (EU) *[please insert reference – proposal for a Directive on payment services and electronic money services in the internal market – COM/2023/366 final]*, Directive (EU) 2015/843[6] as replaced by Directive (EU) *[please insert reference – proposal for Anti-Money Laundering Directive - COM/2021/423 final]* should apply to the supervision by competent authorities and the sanctions regime and supervisory arrangements between the competent authorities of the home Member States and of the host Member States, concerning provision of digital euro payment service by payment services providers established in Member States whose currency is not the euro.

(6) Similarly, as in case of competent authorities of Member States whose currency is the euro under Regulation (EU) [*please insert reference – proposal for a Regulation of the European Parliament and the Council on the establishment of the digital euro – COM(2023) 369 final*], the competent authorities responsible under Directive (EU) 2015/2366 for supervising the provision of payment services should also cooperate with the European Central Bank for the purposes of supervising the application of payment-related obligations laid down in Regulation (EU) *[please insert reference – proposal for a Regulation of the European Parliament and the Council on the establishment of the digital euro – COM(2023) 369 final]*.

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5 Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

6 Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

(7) In accordance with Article (4), point (25), of Directive 2015/2366, funds mean banknotes and coins, scriptural money or electronic money. As a new form of central bank money with legal tender, the digital euro should be considered as funds under Directive 2015/2366 as replaced by Directive (EU) *[please insert reference – proposal for a Directive on payment services and electronic money services in the internal market - COM/2023/366 final]* which extends the definition of funds to all forms of central bank money issued for retail use. The same definition of funds should be included in Regulation (EU) 2021/1230 of the European Parliament and of the Council of 14 July 2021 on cross-border payments in the Union.

(8) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States as rules applicable to payment services providers should be the same regardless of whether they are incorporated in a Member State whose currency is the euro or not, but can rather, by reason of the scale or effects of the action to ensure the integrity of the single market, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(9) The European Data Protection Supervisor and the European Data Protection Board were consulted in accordance with Article 42 of Regulation (EU) 2018/1725 and delivered a joint opinion on [XX XX 2023],

HAVE ADOPTED THIS REGULATION:

Article 1
Subject matter and scope

This Regulation lays down rules concerning:

(a) the specific obligations that payment service providers incorporated in Member States whose currency is not the euro shall apply when providing digital euro payment services;

(b) the supervision and enforcement of the obligations referred to in point (a) by the Member States whose currency is not the euro;

(c) the specific obligations that original equipment manufacturers of mobile devices and providers of electronic communication services within the meaning of Article 2(1) Directive (EU) 2018/1972 established in Member States whose currency is not the euro shall apply in relation to the digital euro.

Article 2
Definitions

For the purposes of this Regulation, the following definitions shall apply:

1. ‘digital euro’ means the digital form of the single currency available to natural and legal persons as defined in Article 2, point 1 of Regulation (EU) [*please insert reference – proposal for a Regulation of the European Parliament and the Council on the establishment of the digital euro – COM(2023) 369 final*];

2. 'payment service providers' means a payment service provider as defined in Article 4, point (11) of Directive 2015/2366;

3. ‘digital euro payment service’ means digital euro payment service as defined in Article 2 point (8) Regulation (EU) [*please insert reference – proposal for a Regulation of the European Parliament and the Council on the establishment of the digital euro – COM(2023) 369 final*];

4. ‘residence’ means the place where a natural person is legally resident in the Union as defined in Article 2, point (2), of Directive 2014/92/EU of the European Parliament and of the Council[7];

5. ‘visitor’ means a natural person as defined in Article 2, point 22, of Regulation (EU) [*please insert reference – proposal for a Regulation of the European Parliament and the Council on the establishment of the digital euro – COM(2023) 369 final*];

6. ‘Member State whose currency is not the euro’ means a Member State as defined in Article 2, point 23, of Regulation (EU) [*please insert reference – proposal for a Regulation of the European Parliament and the Council on the establishment of the digital euro – COM(2023) 369 final*];

7. ‘mobile device’ means a mobile device as defined in Article 2, point 31, of Regulation (EU) [*please insert reference – proposal for a Regulation of the European Parliament and the Council on the establishment of the digital euro – COM(2023) 369 final*].

Article 3
Provision of digital euro payment services

Within the framework of Directive (EU) 2015/2366, payment services providers incorporated in the Member States whose currency is not the euro may provide digital euro payment services to:

(a) natural and legal persons residing or established in the Member States whose currency is the euro;

(b) natural and legal persons who opened a digital euro account at the time they resided or were established in the Member States whose currency is the euro, but no longer reside or are established in such Member States;

(c) visitors;

(d) natural and legal persons residing or established in Member States whose currency is not the euro, subject to the conditions laid down in Article 18 of the Regulation (EU) [*please insert reference – proposal for a Regulation of the European Parliament and the Council on the establishment of the digital euro - COM(2023) 369 final*];

(e) natural and legal persons residing or established in third countries, including territories under a monetary agreement with the European Union, subject to the conditions laid down in Articles 19 and 20 of the Regulation (EU) [*please insert reference – proposal for a Regulation of the European Parliament and the Council on the establishment of the digital euro - COM(2023) 369 final*].

[7] Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (OJ L 257, 28.8.2014, p. 214).

Article 4
Applicable law

1. The requirements laid down in Article 13, Article 14(1), Chapter V, Article 18, Chapter VII, Chapter VIII and Chapter IX of Regulation (EU) No X on the establishment of the digital euro, shall be applicable to payment service providers incorporated within the territory of Member States whose currency is not the euro that provide digital euro payment services in accordance with Article 1 of this Regulation.

   The requirement laid down in Article 33 of Regulation (EU) [*please insert reference – proposal for a Regulation of the European Parliament and the Council on the establishment of the digital euro – COM(2023) 369 final*] shall be applicable to original equipment manufacturers of mobile devices and providers of electronic communication services within the meaning of Article 2 (1) Directive (EU) 2018/1972 established in Member States whose currency is not the euro.

2. In accordance with Article 4(25) of Directive (EU) 2015/2366 of the European Parliament and of the Council, of 25 November 2015, on payment services in the internal market, as amended by Directive (EU) *[please insert reference – proposal for a Directive on payment services and electronic money services in the internal market - COM/2023/366 final]* , the provisions of that Directive shall apply to payment transactions in digital euro.

3. In accordance with Article 2(10) of Regulation (EU) 2021/1230 of the European Parliament and of the Council of 14 July 2021 on cross-border payments in the Union , the provisions of that Regulation shall apply to payment transactions in digital euro.

4. Without prejudice to Articles 37 of Regulation [*please insert reference – proposal for a Regulation of the European Parliament and the Council on the establishment of the digital euro – COM(2023) 369 final*], Directive (EU) 2015/849 of the European Parliament and of the Council, of 20 May 2015, on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds shall apply with respect to the digital euro.

Article 5
Competent authorities

1. Directive (EU) 2015/2366 of the European Parliament and of the Council shall apply to the supervision by competent authorities and the sanctions regime and supervisory arrangements between the competent authorities of the home Member States and of the host Member States, concerning the activities of payment service providers established in Member States whose currency is not euro in relation to the digital euro for the purposes of applying this Regulation and the obligations referred to in Chapters IV, V, VI and VII of Regulation (EU) [*please insert reference – proposal for a Regulation of the European Parliament and the Council on the establishment of the digital euro – COM(2023) 369 final*].

2. Directive (EU) 2015/843 shall apply to the supervision by competent authorities and the sanctions regime and supervisory arrangements between the competent authorities of the home Member States and of the host Member States concerning the

activities of payment service providers incorporated in Member States whose currency is not euro established in relation to the digital euro for the purpose of applying thus Regulation and the obligations contained in Chapter IX of Regulation (EU) *[please insert reference – proposal for a Regulation of the European Parliament and the Council on the establishment of the digital euro – COM(2023) 369 final]*.

Article 6
Cooperation with the European Central Bank

For the purposes of supervising the application of Chapters IV, V and VII of the Regulation (EU) *[please insert reference – proposal for a Regulation of the European Parliament and the Council on the establishment of the digital euro – COM(2023) 369 final]* the competent authorities referred to in Article 4(1) shall cooperate with the European Central Bank.

Article 7
Amendments

Article 2(10) of Regulation (EU) 2021/1230 of the European Parliament and of the Council of 14 July 2021 on cross-border payments in the Union is replaced by "'funds' means central bank money issued for retail use, scriptural money or electronic money".

Article 8
Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union.*

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*