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REPORT

From:	Presidency
To:	Permanent Representatives Committee (Part 2)
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the legal tender of euro banknotes and coins 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 Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the establishment of the digital euro - Progress report

I. GENERAL REMARKS

1. **On the 28th of June 2023 the European Commission put forward the Single Currency Package**. It includes a proposal to ensure that citizens and businesses can continue to access and pay with euro banknotes and coins (hereinafter “cash”) across the euro area (Regulation on the legal tender of euro banknotes and coins, hereinafter “Regulation on cash”), and a proposal to establish and set out a framework for a possible new digital form of the euro that the Eurosystem may issue in the future, as a complement to cash (Regulation on the establishment of the digital euro, hereinafter “Regulation on the digital euro”).

In order to ensure consistency with Single Market rules, the Commission complemented the Regulation on the digital euro with a third proposal for a Regulation on the provision of digital euro services by payment service providers incorporated in Member States whose currency is not the euro.

2. **The Single Currency Package is aimed to ensure the fitness of the future European monetary system, safeguarding citizens' choice to pay with public money.** On the one hand, citizens should maintain the choice to access cash and pay with cash in the euro area, since it is a key driver of financial inclusion and resilience. On the other hand, citizens may also have the choice to use public money when transacting in the digital economy. In this way, a diversified and healthy balance of public and private forms of money can be preserved in the digital economy.

3. **The Spanish Presidency of the EU Council, that started on the 1st of July 2023, immediately started working on these files.** The Presidency organized an introductory Council Working Group on the 19th of July tackling the Single Currency Package as a whole. From then on, the Presidency has organized five additional meetings for the Regulation on the digital euro and four additional meetings for the Regulation on cash. Even though each file has been treated separately to allow for deeper discussions, the Presidency has borne in mind the necessity to ensure the coherence between all three files, since they cover different representations of the single currency.

4. **The Spanish Presidency has ensured during the whole semester that any decision or debate on the euro cash or on a possible digital euro goes through a rigorous democratic scrutiny**. This note is especially relevant given the critical importance of these topics for citizens and the functioning of our economies. In this sense, the Presidency has strived to engage as much as possible with any stakeholder with an interest in the matter. Also, the Presidency recognizes the constructive and valuable input provided by the European Central Bank during the semester.

5. **The European Central Bank shared with the Council Working Group its Opinions on the proposals as well as its decision to move to the preparation phase of the digital euro project.** According to the European Central Bank, the preparation phase that started on the 1st of November 2023 will lay the foundations for a potential digital euro issuance, working on finalizing the Rulebook and on selecting providers to develop the platform and infrastructure. The European Central Bank recognizes that the adoption of the Regulation on a digital euro setting out the regulatory framework for the digital euro is a necessary pre-condition before the digital euro may be issued.

6. **This Report highlights the progress undertaken during the Spanish Presidency of the Council concerning these files, and it does not preclude any decisions by the Council regarding the content of the proposals.** The Presidency highlights the following elements related to the digital euro that have been discussed during the Spanish semester: (i) the need to confer legal tender status to the digital euro, taking into account the principle of proportionality; (ii) the option for payment service providers to distribute the digital euro and the obligation for credit institutions to distribute it to certain categories of natural persons; (iii) the need to have holding limits in order to safeguard financial stability and to exclude remuneration of the digital euro; (iv) a compensation model that provides the right incentives for payers, payees and intermediaries; (v) the request for a high level of privacy and (vi) the relevance of the offline functionality to ensure resilience and financial inclusion. Regarding the Regulation on cash, the Presidency highlights the discussions on (i) the definition of the legal tender status of euro cash and the scope of the principle of mandatory acceptance; (ii) the need to keep coherence between the rules that govern euro cash and the digital euro and (iii) the importance of ensuring access to cash, especially for vulnerable groups.

7. **The work under the Spanish Presidency has set the basis for future discussions at the Council on the digital euro project.** The Presidency will share with the incoming Belgian Presidency the technical work and drafting suggestions that have been prepared during the Spanish semester. As the technical debates have moved forward, the Spanish Presidency has worked during the whole semester on concrete drafting suggestions that have been frequently shared with Member States for scrutiny. The Presidency considers that those materials constitute a good starting point for the work ahead. The Presidency also echoes the vision that Member States share on the need for further in-depth discussions at the Council Working Group on the content of the Regulation.

8. **The relevance of the potential introduction of a digital euro in the European economy calls for further careful and detailed analysis of the legal and economic impacts of such decision.** The Presidency highlights the excellent exchanges that have taken place among Member States, the Commission and the European Central Bank during the Spanish Presidency. Spain will be ready to keep on collaborating with the incoming Belgian Presidency on these matters.

II. DIGITAL EURO

9. **Before starting legislative work, the Presidency deemed it necessary to hold a strategic reflection among Member States on the European payments market, where a potential digital euro would fit in.** The reflection showed that payment markets differ from country to country, leading to some degree of fragmentation of the Single Market. Also, Member States highlighted that financial inclusion and resilience are two notes that should be especially preserved. This exercise brought to light the role that a digital euro could play in guaranteeing the role of public money in the future (safeguarding the monetary sovereignty of the euro area), achieving the European open strategic autonomy objectives in the field of payments, promoting competition, fostering innovation, and further integrating the European Single Market.

Legal tender status of the digital euro.

10. **Regarding the legal tender status of the digital euro, there is a broad understanding among Member States that it is a key characteristic of public money that would help to achieve the objectives of the digital euro.** Nonetheless, Member States are also aware of the fact that mandatory acceptance of the digital euro, derived from its legal tender status, should be proportionate and take into account relevant circumstances, for instance as regards small merchants that only operate in cash or as concerns the freedom of contract. Many Member States share the view that, in order to guarantee the legal tender status of the digital euro, *ex ante* unilateral exclusions of payments in the digital euro, that have not been individually negotiated among the parties, should be prohibited.

Distribution model

11. **Member States agree that payment service providers that are entitled to provide payment services according to the Payment Services Directive should be eligible to provide digital euro payment services.** Consequently, this implies, first, that no additional authorisation or registration would be required by competent authorities and, second, that the provision of certain digital euro payment services should be subject to the specific category of the payment service provider under the Payment Services Directive, on the basis of an equivalence list to be developed as the current negotiations on the Payments Package advance. Also importantly, the Presidency has worked to seek a broad consensus on ensuring that payment institutions and e-money institutions can compete in the digital euro market on a level playing field with other market participants.

12. **Member States have expressed the need to have clear rules on the liability regime for payment service providers and the Eurosystem.** Further work is needed to reflect in the Regulation that, depending on the origin of the liability, either the payment service provider or the Eurosystem could be held liable for any harm done to a digital euro user or to another payment service provider. Member States agree with the principle that the digital euro user shall seek compensation from its payment service provider, regardless of the liability allocation, and that in case the fault resides in the Eurosystem, a right of recourse for the payment service provider shall exist. The Regulation needs to ensure that these provisions are adequately reflected in the contracts between the Eurosystem and the payment service providers.

13. **Most Member States agree that credit institutions should be obliged to provide basic digital euro payment services at the request of their clients acting as consumers, in order to ensure a broad and convenient access to the digital euro.** Nonetheless, several Member States noted that this obligation needs to be assessed closely together with the compensation model of intermediaries. In parallel, Member States agree with the principle that, to mitigate the financial exclusion risk, unbanked consumers should have a right to access a digital euro payment account, in the context of Directive 2014/92/EU on access to a payment account with basic features. Also, Member States consider that it should be ensured that the digital euro payment services are accessible to vulnerable persons, including persons with disabilities, limited digital skills and the elderly. With these objectives in mind, some Member States proposed to further work on possible instruments to ensure availability of accessible and face-to-face digital euro payment services under some circumstances (for example, through the designation of a provider of universal service, as in other network industries).

14. **Most Member States are open to allowing the provision of multiple digital euro payment accounts for one single user, as long as it does not result in a service degradation for users.** In case it is shown that provision of multiple accounts for one user does not significantly increase complexity for processing tasks and does not provide a lower level of privacy for users, most Member States consider that the provision of multiple accounts would ensure a higher level of competition in the market, leading to more innovation and variety, and lower prices. In this sense, technical analysis by the European Central Bank on how a single access point would work will be welcome by the Council Working Group.

Limits to the store of value function

15. **Member States agree on the need to have holding limits for the digital euro in order to safeguard financial stability.** Regarding the distribution of competences to set the holding limits, it is now the task of co-legislators to strike the right balance pursuant to the competences that different institutions have under the Treaties. In this sense, the Presidency recalls that, under Article 133 of the Treaty on the Functioning of the European Union, it is for co-legislators to lay down the measures necessary for the use of the euro as the single currency. Such powers are without prejudice of the powers of the European Central Bank. Regardless of the specific institutional arrangement to set the holding limits, most Member States recognize the need for the European Central Bank to have some degree of flexibility in order to adjust the holding limits to safeguard financial stability.

16. **Member States consider that the digital euro should not bear interest**, since the digital euro is to serve as a means of payment and not as a store of value.

Compensation model

17. **Member States agree that the compensation model of the digital euro needs to provide the right incentives for payers, payees and intermediaries.** Regarding payers, the majority of Member States agree with the principle that natural persons that are residents of the euro area and act as consumers should have access to certain basic digital euro payment services free of charge. "Paying for free" is indeed a characteristic of successful means of payment. Which basic services should be free of charge is still subject to further analysis and debate. In parallel, it is important to ensure that payment service providers, some of which might be under a distribution obligation, can recover the costs of distributing the digital euro. Therefore, as it is the case today for digital payments, they would be able to charge merchants, other businesses, and public administrations for using digital euro payment services – both in their role as payers and payees –, as well as natural persons outside of the scope of the basic services. Also, payment service providers would be able to integrate the digital euro payment services within a broader package of banking and payment services. Last, intermediaries would be able to use the digital euro as a platform for innovation to develop new services on top of the basic ones. The Presidency notes the Eurosystem's intention not to charge payment service providers for the costs it bears to support their provision of digital euro payment services.

18. **Most Member States agree with the principle that the Regulation should introduce some provisions to avoid excessive charges for merchants, businesses and public administrations acting as payees**, thereby contributing to balance the bargaining power of the different actors in the market. In this sense, further work is needed to understand the economic consequences of setting a cap to a possible *inter-payment service providers fee* and/or to the *merchant service charge*, taking into account the feasibility of the calculation methodology and the policy objectives that are to be achieved. The relevant decision on the possible caps would need to take due account of the competences of the relevant institutions under the Treaties. Most Member States consider that the Commission should play a role in this respect. At the same time, the Presidency notes the availability of the European Central Bank to provide technical support by gathering data from the market, which should be further specified in the Regulation.

Privacy, offline functionality and no programmability

19. **Member States agree that the digital euro should provide a higher level of privacy than current digital means of payment.** Vis-à-vis the Eurosystem, the mandatory use of pseudonyms for digital euro users and digital euro payment accounts, and the mandatory implementation of state-of-the-art privacy-preserving measures, would ensure that the Eurosystem is unable to identify individual digital euro users. Vis-à-vis the payment service providers, the introduction of specific data protection rules that transparently frame and limit the processing of personal data to essential activities related to the digital euro, in line with the data protection principles of the General Data Protection Regulation (GDPR), would ensure the high-level protection of personal data championed by the European Union. Additionally, the ability to pay offline via digital euro would ensure that users are able to exchange digital euros with a level of privacy similar to that currently provided by cash. Member States welcome the joint opinion of the European Data Protection Board and the European Data Protection Supervisor and show support to work on further alignment with their recommendations. Member States especially recognize the importance of data protection and privacy in the current context of increasing digitalization.

20. **Member States agree that the availability of an offline digital euro is of utmost importance.** The offline digital euro would probably constitute one of the main innovations of the project in the current digital payments industry. An offline digital euro would not only provide a higher level of privacy – comparable to that of euro cash – but it would also step up the resilience of the European payment infrastructures, by becoming independent from third networks (such as processing, telecommunications, or energy networks). An offline digital euro could also be an important element of financial inclusion. Consequently, most Member States agree that the offline digital euro should be available as of the first issuance of the digital euro. In order to achieve a cash-like level of privacy, most Member States agree that an *ad hoc* anti-money laundering regime is to be provided for the offline digital euro. This regime should be built on three pillars: first, that transaction data cannot be retained by payment service providers; second, that clients using the offline digital euro are to be onboarded by payment service providers applying customer due diligence; and third, that some limits need to apply to the offline digital euro to mitigate money laundering and terrorist financing risks. In any case, further assessment and discussion is needed regarding the anti-money laundering regime.

21. **All Member States agree with the proposal of the Commission on the need to exclude any possibility for the digital euro to become programmable money**, thereby excluding a scenario where the units of digital money would have an intrinsic logic that limits each unit's full fungibility.

Key technical features topics to be discussed

22. **Several Member States have highlighted that further work is needed on the technical features of the digital euro and the roles of the public and private sectors to ensure that the project is a true public-private partnership.** The proposal of the Commission envisages that, within the framework of the Regulation, the European Central Bank adopts detailed measures, rules and standards for the digital euro. These are currently being developed in a Rulebook by the European Central Bank's Rulebook Development Group. Since these measures, rules and standards need to comply with the Regulation, some Member States consider that it is critical to address these topics to ensure that the digital euro is a project shared by the private and the public sectors, and that it can fit in an efficient way in the current European payments landscape. Among other topics that should be further discussed by co-legislators before any decision is adopted by the European Central Bank, the Presidency highlights the liability regime, the interoperability of infrastructures, the dispute mechanism and the fraud detection and prevention mechanism. The Presidency also echoes the demand from Member States to keep a constant flow of information and exchanges between the Eurosystem and the Member States regarding technological know-how and potential technical decisions that may impact the policy goals that are pursued by the legislation.

23. **Member States have stressed the importance of business-to-business transactions and innovative payment solutions, including conditional payments.** The Presidency echoes the demand from some Member States to ensure that business-to-business transactions are adequately addressed in the Regulation as well as the Rulebook, as they fall within the scope of the Commission proposal. Also, Member States demand that the Rulebook ensures that innovative uses cases, for example, related to the Industry 4.0 or the *Internet of Things*, can progressively be incorporated into the digital euro infrastructures and solutions as technological know-how progresses.

III. LEGAL TENDER OF EURO BANKNOTES AND COINS

24. **Member States recognize the need to define the legal tender status of euro cash, but have divergent understanding of the scope of application of the principle of mandatory acceptance.** Member States recognize the vulnerability and potential heterogeneity in the acceptance of cash across the euro area in the absence of a unified application and interpretation of the legal tender concept. However, the implications that the status of legal tender might have as regards ex-ante unilateral exclusions of cash payments has revealed diverging views among Member States. On the one hand, some Member States advocate for an explicit prohibition of these ex-ante (i.e. not negotiated) exclusions, to provide legal clarity to the markets. On the other hand, other Member States argue that such a prohibition would be at odds with the principle of freedom of contract enshrined in their national legislation. The Presidency is working on a possible solution that addresses both the imperative for legal certainty and the necessity to take into account national circumstances of certain Member States where "no cash" signs and other forms of ex-ante unilateral exclusion have arisen over the years. Additionally, many Member States consider that the Regulation should clarify that the mandatory acceptance of cash may be restricted by the Member States for reasons of public interest and pursuant to their own competences outside of the area of monetary law and policy and of other exclusive Union competences, provided those restrictions are justified by a public interest objective and proportionate to it.

25. **Member States agree on the need to coherently regulate the legal tender status of the two forms of central bank money available to the public (euro cash and the digital euro), without prejudice to the differences between these forms of the single currency.** The Presidency has conducted multiple discussions with the Member States on this matter, achieving substantial progress in identifying the key elements that should remain aligned in both forms of the euro, such as some exemptions to the principle of mandatory acceptance (e.g., the good faith principle or the freedom of contract).

26. **Member States agree on the importance to ensure access to cash.** To preserve the effectiveness of the legal tender status, it is fundamental to ensure the ease of access to euro cash for all euro area citizens and businesses. This is particularly relevant for vulnerable groups with a dependency on cash for payments, such as people with limited digital skills and/or income. Member States are willing to ensure sufficient and effective access to cash, as well as to monitor the level of cash acceptance and access to cash. However, for a situation in which cash acceptance in payments or access to cash would be deemed insufficient, most Member States oppose conferring the Commission a specific power that would allow it to adopt implementing acts addressed to individual Member States.