



Council of the European Union
General Secretariat

Brussels, 27 January 2025

**Interinstitutional files:
2023/0212 (COD)**

WK 1025/2025 INIT

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WORKING DOCUMENT

From:	Presidency
To:	Working Party on Financial Services and the Banking Union (Digital Euro Package) Financial Services Attachés
Subject:	Digital euro - WP meeting on 31 January 2025 - Presidency Discussion Note on international use of digital euro – Distribution of digital euro outside of the euro area and in third countries

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Polska Prezydencja w Radzie UE
Polish presidency of the Council of the EU
Présidence polonaise du Conseil de l'UE

Digital Euro Regulation
Brussels, 31 January 2025

Presidency Discussion Note
Discussion on international use of digital euro –
Distribution of digital euro outside of the euro area and in third
countries



The objective of the Presidency for this agenda item is to reach agreement in substance on legal text concerning distribution of the digital euro outside the euro area, namely Articles 12a, 18, 19, 20 and 21, building on suggestions already made by the Spanish and Belgian Presidencies and the drafting suggestions on Article 18 submitted by several non-euro area Member States.

1. Distribution of the digital euro to natural and legal persons residing or established in third countries or territories under a monetary agreement with the Union (Article 20)

The contents of Article 20 on distribution of the digital euro in third countries or territories under a monetary agreement has received no comments from Member States and there appears to be a broad agreement. The Presidency therefore proposes to maintain the wording of this Article as proposed by the Commission in its original proposal.

Question 1. Do Member States agree with Article 20?

2. Acceptance of digital euro payments by merchants outside the euro area (Articles 12a, 18 and 19)

2.1. Extending digital euro acceptance to merchants in non-euro area Member States

Some Member States indicated that Article 12a(f) refers only to citizens – natural persons and there is no reference to legal persons as such. On that basis, the Presidency proposes the following drafting suggestions to include in Article 12a(f) also 'legal persons' established in the Union exercising their free movement rights in the euro area.

Please note that the BE PCY amendments are highlighted in **bold**, while the PL PCY ones are in **red** font.

Art. 12a(f)

(f) Citizens Natural persons of the Union who (i) reside in a Member State whose currency is not the euro or in a third country or legal persons established in a Member State whose currency is not the euro, and (ii) exercise their free movement rights in a Member State whose currency is the euro as workers, self-employed persons or by providing services.

Furthermore, most Member States expressed support for the proposal to allow merchants established in Member States outside the euro area to accept payments in digital euro without the need to conclude an arrangement between the ECB and a relevant national central bank as provisioned under Article 18. These Member States

further underlined that it has to be clear that these entities are allowed only to accept such payments but not to hold and store digital euro.

It is also worthwhile to indicate certain advantages that such an approach would have. One is the promotion of the free movement of payment services across the Union and ensuring a level-playing field between euro area merchants and non-euro area merchants. At the same time, it would have only negligible effects on the consolidated balance sheet of the European Central Bank and national central banks, on the monetary sovereignty and financial stability of non-euro area countries, and on the fulfilment of euro area accession criteria and the process set out in Article 140 TFEU, as payments to these merchants could only be made from digital euro holders that are euro area residents or belong to one of the other categories with rightful access to the digital euro, as listed in Article 12a.

However, the combination of (i) the possibility for non-euro area residents in border regions to gain access to digital euro under article 12a(f) (as agreed in previous discussions); and (ii) the proposal to extend merchant acceptance of digital euro to non-euro area Member States without requiring an arrangement as provided for in Article 18 could create a situation where the digital euro becomes the dominant means of payment in border regions. This scenario, even if unlikely, would need to be taken into account when deciding on the default possibility for non-euro area merchants to accept digital euro.

Moreover, the Presidency would like to clarify that this extended merchant acceptance would be subject to the following limitations:

- In the absence of an arrangement concluded between the ECB and the NCB under Article 18, merchants would only be able to accept digital euro. These merchants could not hold digital euro in the absence of the arrangement. Instead, digital euro would immediately be converted to commercial bank money via a waterfall functionality;
- As the digital euro would not have legal tender status in non-euro area Member States, caps on fees and charges would not apply when non-euro area merchants made use of services of PSPs for accepting digital euro payments;
- Non-euro area Member States would still have the freedom to introduce national legislation that could prohibit acceptance of digital euro by merchants established or residing in their jurisdiction.

The Presidency, therefore, proposes the drafting suggestions below, which appear to be necessary to (i) reflect the rationale for extending merchant acceptance in a recital; and (ii) allow PSPs to provide digital euro services to merchants from non-euro area Member States even in the absence of an arrangement.

Nonetheless, as a reminder, the Presidency would like to stress that the above proposals do not change the categories of persons that can make digital euro payments, i.e. digital euro users who have access to the digital euro pursuant to Article 12a(1) (a)-(f).

*Question 2. Do Member States agree with the drafting suggestion that Art. 12a(f) should include natural and **legal** persons in the Union exercising their free movement rights in the euro area as eligible users for the digital euro?*

Question 2.1. Do Member States agree with the drafting suggestions reflected in red below in section 2.2, pages 4 and 5, to extend the option to accept digital euro payments to merchants in non-euro area Member States, while clarifying that these merchants can only accept but not hold digital euro?

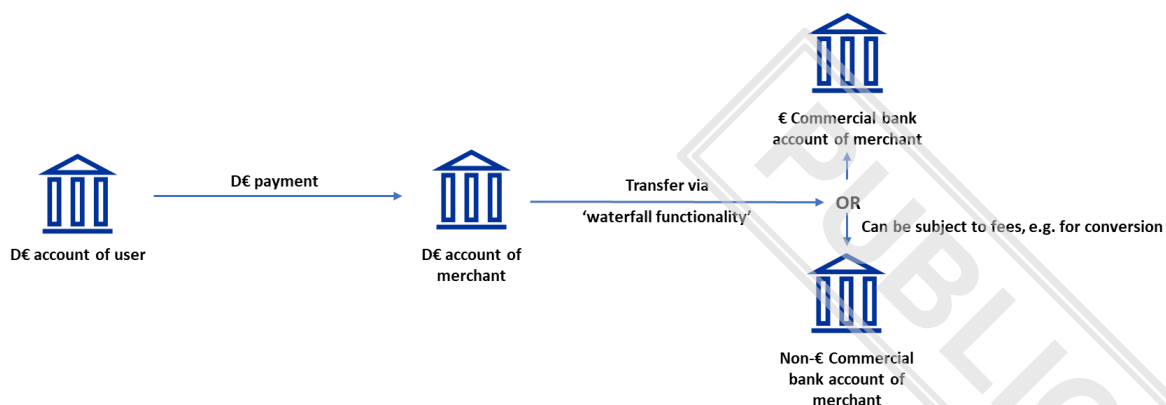
2.2. Extending digital euro acceptance to merchants in third countries

Taking into account the results of previous discussions on Article 18 and the option of extending digital euro acceptance to merchants in non-euro area Member States, in the view of the Presidency it would be consistent to consider and discuss on extending digital euro acceptance to merchants in third countries.

It is therefore crucial to indicate the potential rationale for extending digital euro acceptance merchants in third countries as well, i.e. allowing acceptance without requiring an agreement as provided for in Article 19. It would serve to remove obstacles to provision of services to merchants in third countries and would make it possible for Union citizens and legal persons to make payments in digital euro to these merchants. The same limitations as outlined in section 2.1 would apply. The effects on the monetary sovereignty of third countries would be negligible, as, for instance, their merchants could not hold digital euro and it would not in any way allow citizens of such third countries access to making payments in digital euro in the absence of an agreement as provided for in Article 19.

Moreover, in the Presidency's understanding only EU PSPs could provide services to merchants in third countries if merchants in third countries would be allowed to accept digital euro payments in the absence of an agreement under Article 19. In practice, a merchant from a third country would obtain a digital euro payment account with an EU PSP. For the waterfall functionality, the merchant could choose to link its digital euro payment account to

- (i) a euro-denominated commercial bank account, similar to waterfall functionality for merchants inside the euro area; or
- (ii) a commercial bank account denominated in another currency; the transfers could then be subject to a fee imposed by the PSP, e.g. for the currency conversion of the funds.



Question 2.2. Do Member States consider that PSPs should be allowed to provide digital euro payment services, solely for the purpose of acceptance of payments, not only to merchants in non-EA MS, but also in third countries in the absence of an agreement as per Articles 19 and 20? If so, do Member States agree with the drafting suggestions (reflected below in blue)?

Drafting suggestions for questions 2.1 and 2.2.

Digital Euro Regulation – Article 12a

(...)

2. Within the framework of Directive 2015/2366, payment service providers may provide merchants residing or established in a Member State whose currency is not the euro [or in a third country] digital euro payment services allowing them to receive digital euro payment transactions from persons belonging to the categories set out in paragraph 1, even if the conditions referred to in Article[s] 18[-20] have not been met, subject to the national legislation of that Member State [or third country].

Regulation on the provision of digital euro services by payment services providers incorporated in Member States whose currency is not the euro – Article 3

(...)

2. Within the framework of Directive 2015/2366, payment service providers may provide merchants residing or established in a Member State whose currency is not the euro [or in a third country] digital euro payment services allowing them to receive digital euro payment transactions from persons belonging to the categories set out in paragraph 1, even if the conditions referred to in Article[s] 18[-20] have not been met, subject to the national legislation of that Member State [or third country].

Digital Euro Regulation – Recital 48a [NEW]

Merchants outside the euro area being allowed to receive digital euro payment transactions, without being able to hold digital euro, would promote the free movement of payment services across the European Union. At the same time, effects on the consolidated balance sheet of the European Central Bank and national central banks, on the monetary sovereignty and financial stability of non-euro area Member States[and third countries], as well as of the fulfilment of euro area accession criteria and the process set out in Article 140 TFEU [for non-euro area Member States]would be negligible. Merchants outside the euro area would be able to hold digital euros only subject to the conditions laid down in Article[s] 18[, 19 or 20]. This is why merchants in Member States whose currency is not the euro[, and merchants in third countries,] should be able to receive digital euro payment transactions from digital euro users that have access to the digital euro pursuant to Article 12a, without being subject to the conditions laid down in Article[s] 18[, 19 or 20]. This should be without prejudice to Article[s] 18[, 19, and 20] and provided that national legislation of the Member State whose currency is not the euro[, or of the relevant third country,] does not prohibit such use.

3. Entry into force of arrangements under Article 18 and ‘relevant requirements laid down in this Regulation’ referred to in Article 18(2)(c)**3.1. Entry into force of arrangements under Article 18**

The Presidency would like to sum up the discussion on Article 18 that took place at the Council Working Party meeting on 25 September 2024 under the Hungarian Presidency.

During the meeting and in the written comments, many Member States supported the idea that only the entry into force (and not the signing) of the arrangement between the European Central Bank and the non-euro area national central banks should be conditional on the adoption of relevant national legislation or compliance with requests, rules and standards by the European Central Bank. This would mean that the signing of the arrangement would be subject to the fulfilment of the conditions listed in Article 18(2) (a) and (b), whereas the entry into force of the arrangement would be conditional on fulfilment of Article 18(2)(c).

Most Member States stated that Article 18(3) on the content of the arrangements need not be further specified in the Regulation. However, some Member States considered that the minimum elements to be contained in the arrangements might be specified in the recitals.

Question 3.1. Do Member States agree with a clarification in the Regulation that entry into force of the arrangements should be conditional on adapting national legislation, whereas the signing of the arrangement would be conditional on the fulfilment of 18(2) (a) and (b)?

3.2. Information point on 'relevant requirements laid down in this Regulation'

In the CWP of 25 September 2024, most Member States expressed their wish to refine the exact drafting of Article 18. Some non-euro area Member States mentioned that it is still unclear which requirements of the Regulation would be deemed 'relevant' and that it should be clarified as this might necessitate changes to national legislation for an arrangement to enter into force.

As regards the relationship between the digital euro regulation and national law in the context of Article 18, it is clear that Chapter III on legal tender is not relevant and that Article 14 only applies to euro area residents. Furthermore, obligations to PSPs established in non-EA MS are addressed in the Regulation based on Article 114 TFEU¹, which is binding and directly applicable to PSPs incorporated in non-euro area Member States. Provisions that contain instructions to the ECB are not relevant either. However, other provisions of the digital euro regulation may require adaptations in national law. In particular, the national laws in a Member State whose central bank signs an arrangement pursuant to Article 18 could stand in the way of the correct application of the digital euro regulation or may interfere with the effective provision of digital euro services in view of the ECB's standards and measures to be adopted. In that case, adjustments to national legislation would be needed.

Question 3.2. Do Member States consider that the clarifications provided in the Presidency paper respond to the concerns addressed regarding "relevant requirements"?

4. Proposed amendments to Article 18 by non-EA Member States

As a follow-up to the Council Working Party meeting of 25 September 2024, several non-euro area Member States provided the Hungarian Presidency with a joint proposal regarding Article 18 and a related recital 48. However, the proposal, has not been officially circulated to other Member States and has therefore not yet been discussed in the Working Party. That being so, in the view of the Presidency, it is worth discussing the proposed amendments in the Working Party. The Presidency would like to present the proposal, which has been constructed on the basis of the joint proposal for amendments proposed by these Member States below.

The proposal aims to remove the sentence that was added to the recital 48 during the Belgian Presidency as:

- 1) it may otherwise create the impression that acceptance of payments in digital euro by legal persons established in Member States outside the Eurozone is also subject to the arrangement between the ECB and NCBs;

¹ Proposal for a Regulation of the European Parliament and 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 – COM(2023) 368 final.

2) there is a risk of the regulation laying down requirements by obliging the central bank to pay attention to specific interests which may challenge the central bank's key mandate and ultimately potentially challenging central bank independence.

Moreover, the proposal aims to clarify what the arrangement between the ECB and non-euro area NCB may consist of. It is also suggested that what are considered 'relevant requirements' (Article 18(2)(c)) be clarified, as it is currently not entirely clear which provisions are considered relevant requirements in order to enter an arrangement pursuant to Article 18. Following the discussions and positions of Member States, the entry into force (but not the signing) of the arrangement is to be subject to the conditions included in Article 18(2).

It is also suggested that the word 'any' be removed from Article 18(2)(b)(i), as it does not seem proportionate for the national central banks to be bound by any rules, guidelines, and instructions, especially since these requirements will be outlined in the arrangement between the parties.

Drafting suggestions (**Bold** marks BE and HU PCY drafting suggestion, **red** marks new drafting suggestions based on the NEAMS proposal)

(48) The provision of digital euro payment services to digital euro users residing or established in a Member State whose currency is not the euro should be subject to a prior arrangement between the European Central Bank and the national central bank of the Member State whose currency is not the euro, following a **request decision** from the Member State whose currency is not the euro. ~~Member States, when considering this decision, and the European Central Bank, when finalising the arrangements with the national central banks of those Member States, should give due regard to the interests of natural and legal persons residing or established in Member States whose currency is not the euro, such as the interests of legal persons to be able to accept payments in digital euro when they sell goods or provide services to natural or legal persons who reside or are established in the euro area.~~ The arrangement should specify the necessary implementing measures and procedures, as well as the cases under which the arrangement may be restricted, suspended, or terminated. This includes, among others, main rights and obligations of the contracting parties, clauses regarding cooperation and exchange of information, as well as the date of entry into force. The arrangement must not endanger the monetary sovereignty of non-euro area Member States. Therefore, the arrangement will not require non-euro area Member States to adopt legal provisions that could harm monetary sovereignty, such as Article 7 regarding legal tender status and Article 14 regarding the obligation for credit institutions to provide digital euro services.

In line with the Agreement on the European Economic Area, digital euro users residing or established in non-euro area Member States may be provided digital euro payment services by payment service providers established in the European Economic Area.

Article 18

1. Payment service providers may only distribute the digital euro to natural and legal persons residing or established in a Member State whose currency is not the euro if the European Central Bank and the national central bank of that Member State have signed an arrangement to that effect **and this arrangement has entered into force**.

2. The ~~signing and~~ **entry into force** of the arrangement referred to in paragraph 1 shall be subject to all of the following conditions:

(a) the Member State whose currency is not the euro has notified to the ~~other Member States Council~~, the Commission and the European Central Bank ~~the request its decision to provide access to and use of~~ **allow the provision of digital euro payment services** to natural and legal persons residing or established in that Member State;

(b) in ~~its request, the arrangement with the ECB, the central bank of the~~ Member State whose currency is not the euro ~~has~~ undertakes:

(i) to ~~ensure that its national central bank shall~~ abide by **any** rules, guidelines, instructions or requests issued by the European Central Bank in relation to the digital euro **as outlined in the arrangement**;

(ii) to ~~ensure that its national central bank shall~~ provide all information **that the European Central Bank may require** on the **access and use of the digital euro as part of access to and use of the** ~~the provision and use of~~ digital euro **payment services, including digital euro holdings**, in that Member State ~~that the European Central Bank may require~~.

(c) the Member State whose currency is not the euro has adopted all the national **legal provisions legislations** necessary to ensure respect, **insofar as relevant**, of the **relevant provisions of this Regulation and the relevant measures, rules and standards requirements laid down in this Regulation or the rules and standards** adopted **by the European Central Bank** pursuant to Article 5(2).

3. The ~~agreement arrangement~~ referred to in paragraph 1 shall specify the **main rights and obligations of the contracting parties, including the** necessary implementing measures and procedures, **clauses regarding cooperation and exchange of information** and the cases under which the ~~agreement arrangement~~ may be restricted, suspended, or terminated.

4. Payment service providers shall implement the limits set by the European Central Bank in accordance with Article 16(4) on the use of the digital euro by natural and legal persons residing or established in Member States whose currency is not the euro, which are applicable in those Member States.

5. This Article is without prejudice to the provision of digital euro payment services to natural and legal persons referred to in Article 12a(1), points (b), (c) and (f).

Moreover, these Member States suggested that a term 'distribution' be defined in Article 2 of the Regulation to make it clear that distribution includes the option for natural and legal persons to hold the digital euro.

Question 4.1. Do Member States agree with the proposed amendments to recital 48 and Article 18, possibly with exception to the change proposed in question 3.1?

Question 4.2. Do Member States agree to define the term distribution in Article 2 (Definitions), as suggested by some Member States?

5. Distribution of the digital euro to natural and legal persons residing or established in third countries (Article 19)

In light of the proposed amendments to Article 18 outlined above, the Presidency would like to suggest the analogous amendments to Article 19 in order to ensure a certain level of consistency and alignment between these two articles. On the basis of the BE PCY proposal, which received minimal negative feedback from Member States, the Presidency suggest the following amendments.

Please note that the BE PCY amendments are highlighted in **bold**, while the PL PCY ones are in **red** font.

Article 19

1. The digital euro may only be distributed to natural and legal persons residing or established in third countries if the Union and the third country concerned have **signed concluded** a prior agreement to that effect.

2. The Council, on a recommendation from the Commission and after **having consulted** the European Central Bank, shall decide ~~on~~ the arrangements for the negotiation and the conclusion of the agreement referred to in paragraph 1, provided that all of the following conditions have been met:

(a) the third country ~~ensures~~ **confirms** that:

(i) ~~its the third country's~~ national central bank and, where appropriate, its national competent authorities **shall have undertaken an obligation to** abide by ~~any~~ rules, guidelines, instructions or requests issued by the European Central Bank in relation to the digital euro ~~as outlined in the agreement~~;

(ii) ~~its the third country's~~ national central bank and, where appropriate, its national competent authorities **shall have undertaken an obligation to** provide all information ~~that the European Central Bank may require~~ on the **access and use of the digital euro as part of the provision and use** of digital euro **payment services, including digital euro holdings,** in that third country ~~that the European Central Bank may require~~;

(b) the third country has adopted all the ~~national legal provisions legislations~~ necessary to ensure respect, ~~insofar as relevant,~~ of the ~~relevant provisions of this Regulation and the relevant measures,~~ rules and standards ~~laid down in this Regulation or~~ adopted ~~by the European Central Bank~~ pursuant to Article 5(2).

(c) the third country ensures that intermediaries established or operating in the third country that distribute the digital euro are subject to supervisory and regulatory requirements, that are at least equivalent to those applied to payment service providers established in the Union.

3. The agreement between the Union and the third country shall specify: ~~the necessary implementing measures and procedures, and the cases under which the agreement may be restricted, suspended, or terminated, in particular where the third country has been identified as a third country with significant strategic deficiencies in its national anti-money laundering and combating the financing of terrorism regime as referred to in Article 23 of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation – COM/2021/420 final] or as a third country with compliance weaknesses in its national anti-money laundering and combating the financing of terrorism regime as referred to in Article 24 of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation – COM/2021/420 final]. That agreement shall be complemented by an arrangement between the European Central Bank and the national central bank and, where appropriate, the national competent authorities of the third country.~~

(a) the main rights and obligations of the contracting parties, including the necessary implementing measures and procedures, and clauses regarding cooperation and exchange of information;

(b) the cases under which the agreement may be restricted, suspended, or terminated, in particular where the third country has been identified as a third country with significant strategic deficiencies in its national anti-money laundering and combating the financing of terrorism regime as referred to in Article 29 of Regulation (EU) 2024/1624 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing or as a third country with compliance weaknesses in its national anti-money laundering and combating the financing of terrorism regime as referred to in Article 30 of Regulation (EU) 2024/1624. Where appropriate, the Council may consult the Authority for Anti-Money Laundering and Countering the Financing of Terrorism to this end.

The agreement shall be complemented by an arrangement between the European Central Bank and the national central bank and, where appropriate, the national competent authorities of the third country.

4. Negotiations with third countries may be suspended on the basis of the grounds referred to in paragraph 3, **first subparagraph, point (b)**.

5. Intermediaries established or operating in the third country shall implement the limits set by the European Central Bank in accordance with Article 16(5) on the use of the digital euro by natural and legal persons residing or established in the third country, which are applicable in that country.

Nonetheless, if requested by Member States, Article 19 may require further amendments which Member States are welcomed to propose.

Question 5.1. Do Member States:

(i) agree that the changes to Article 18 should be transposed to Article 19;

(ii) agree with the proposed amendments suggestions;

(iii) consider that any further changes to Article 19 are necessary?

5.2. Art. 19(2)(a) – ‘undertake an obligation’

Based on the legacy drafting suggestions of the BE PCY on Article 19(2)(a) to oblige a third country to confirm that its national central bank and its national competent authorities ‘have undertaken an obligation’ to actions imposed in indent (i) and (ii) of this provision, the Presidency would like Member States to give consideration to removing this phrase, in the light of a comment made by one Member State.

The BE PCY motivated the amendments to Article 19 as follows: ‘Since the agreement is between the Union and the third state, it is suggested, in order not to put into question a (possible) independence of the central bank of the third country, to formulate the third state obligation as a confirmation of a commitment by their NCB.’

However, the Member State indicated that the proposal is confusing and that it is not clear with whom and on what legal basis the third country’s NCB would ‘undertake an obligation’ and how such obligations could be enforced in practice.

Therefore, the Presidency, to remove such confusion and uncertainty, proposes to delete the phrase ‘undertake an obligation’ from Article 19(2)(a) indents (i) and (ii).

Question 5.2. Do Member States agree with the suggestion to remove phrase ‘undertake an obligation’?

6. Article 21 on cross-currency payments

In the context of interoperable payments, for the purpose of cross-currency payments involving the digital euro, the term ‘other currencies’ appeared to be unclear, as some Member States had doubts on whether this term refers only to CBDCs issued by central banks of non-euro area Member States and of third countries, or to various digital forms of public and private money used in those Member States and in third countries, and stated that it should be clarified.

In the note for the CWP meeting of 26 March 2024, the BE PCY stated that in their understanding, Article 21 of the Regulation envisages any other currency, regardless of whether it is a CBDC or commercial bank money. The ECB has also clarified this question, and confirmed the BE PCY’s understanding. While CBDCs may be the most likely target for cross-currency payments, there is no need to actively restrict the scope of interoperable cross-currency payments with other forms of currency in the Regulation. Therefore, in the view of the Presidency, the clarification is sufficient and there is no need to introduce further amendments to Article 21.

Question 6. Do Member States agree with the Presidency’s view that there is no need to further amend Article 21 or do they see the need for the further clarifications?