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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 Legal tender status of digital euro

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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
Legal tender status of digital euro



This discussion note focuses on some of the legal tender aspects that relate solely to the digital euro.

In the opinion of the Presidency, another discussion will be needed on the coherence/interplay between digital euro legal tender and cash legal tender provisions (possibly in March). The objective of this meeting is twofold:

- 1) (Re)confirm the legal tender provisions (Chapter III) as discussed and agreed under previous presidencies;
- 2) Discuss targeted amendments to Chapter III and implications deriving from the legal tender provisions that are not directly reflected in Chapter III.

1. Reconfirming drafting suggestions of Spanish Presidency

In this discussion note the Presidency would like to recall the drafting suggestions proposed for Article 9 and recital 18 (see Annex) and take stock of any remaining concerns of Member States. Also, the Presidency has considered useful to include in this note clarification on Article 8 on the territorial scope of the legal tender status.

In the Belgian Presidency's progress report, it is stated that the Spanish Presidency came to the conclusion that the legal tender status of the digital euro is one of the several key aspects covered by the Digital Euro Regulation that are generally supported by Member States. This consensus is generally reflected in the drafting suggestions made by previous presidencies, as only a limited number of amendments were introduced to Chapter III (Legal tender) of the Regulation. As regards Articles 7 to 11, only Article 9 and the related recital have been amended. Therefore, only these changes are included in the Annex to this discussion note.

Moreover, with regard to some Member States' questions as to whether Chapter III (on legal tender status) applies to both online and offline digital euro, the Commission, in its non-paper on the provisions related to offline digital euro¹ which was circulated prior to the CWP meeting of 29 February 2024, confirmed that it does indeed apply to both. The Commission clarified that if merchants were obliged to accept only one of the modalities, this would undermine both the value and use of the offline functionality and result in undermining one of the key aspects of digital euro, i.e. wide acceptance.

Question 1. Bearing questions 2 and 6 of this note in mind, do Member States have any further comments regarding Articles 7 to 11 and the corresponding recitals?

¹ Digital euro - Working Party Meeting on 29 February 2024 - Commission services' non-paper on the provisions related to offline digital euro (WK 2766/2024 INIT).

2. How are payees obliged to accept digital euro?

In the view of the Presidency it is crucial to discuss and clarify how to interpret the mandatory acceptance requirement with respect to the online and offline functionality and with respect to different types of points of interaction. In addition, this discussion note aims to further explore the issue of the mandatory acceptance obligation as regards payments not initiated at the point of interaction. Given that, this note also focuses on presenting the different options and reflecting legal and practical considerations in this regard.

2.1. Acceptance of offline payments is only possible in proximity

Going by the Commission's view as presented in its proposal, it can be understood that the digital euro's legal tender status, including its mandatory acceptance and the resulting discharge of a debt obligation, needs to apply in the same way to online and offline payments in digital euro. This is also implicit in Article 8 and recital 17. Therefore, a payee under the acceptance obligation pursuant to Article 9 would in principle be obliged to and should be able to accept both online and offline transactions, depending on the choice of the payer when discharging the debt obligation. However, online and offline payments in digital euro have distinct technical features, which for instance makes offline payments unsuitable for remote transactions, as, by their very nature, offline payments can only be performed in physical proximity. Therefore, offline transactions will not be suitable for e-commerce and hence the scope of legal tender should be adapted accordingly (i.e. the legal tender of the digital euro as regards the offline functionality would only apply as regards proximity transactions, whereas the legal tender of the online functionality would apply to all transactions). This is also mirrored in the proposal for a Regulation on the legal tender status of euro banknotes and coins, which excludes the applicability of that regulation as regards purchases made at a distance². Article 8 of the Digital Euro Regulation proposal could be further amended to clarify that the legal tender of the offline functionality of the digital euro would not apply in payment situations where there is no physical proximity.

Beyond the clarification on when payees are required to accept offline payments, one Member State questioned the need to clarify the territorial scope of online payments in Article 8. Unlike cash, online digital euro payments can be done at a distance. Article 8 clarifies that it is the residence or establishment of the payee within the euro area territory which determines its obligation to accept digital euro.

Article 8:

~~Territorial~~ **S**cope of legal tender status

1. The digital euro shall have **the status of legal tender** ~~status for as regards~~ **offline payments of a monetary debt denominated in euro that take place within the euro area, with the exception of payments performed at a distance.**
2. The digital euro shall have **the status of legal tender** ~~status for as regards~~ **online payments of a monetary debt denominated in euro to a payee residing or established in the euro area.**

² 'This Regulation shall not apply to payments for goods or services purchased at a distance, including online' (Article 2(2)).

3. In cases where the legal tender status of both online and offline digital euro payment transactions applies, the payer shall be entitled to choose which modality to use and the payee cannot impose or exclude one of the two payment modalities.

Recital 17:

The digital euro should have **the status of legal tender status** for offline digital euro payment transactions occurring within in the euro area, similarly to euro banknotes and coins which have legal tender status in the euro area. **As offline digital euro payments can only be made in physical proximity when the payer's payment instrument and the payee's point of interaction can exchange data, in situations where there is no such physical proximity, it is not justified that offline payments have to be accepted by payees operating remotely.** The digital euro should also have legal tender status for online digital euro payment transactions made to a payee residing or established in the euro area, where the payer is also residing or established in the euro area, **in both situations of proximity and remote payments.** Similarly, the digital euro should have **the status of legal tender status** for online digital euro payment transactions made to a payee residing or established in the euro area, where the payer is not residing or established in the euro area.

Question 2. Do Member States agree that the legal tender status of the digital euro entails the mandatory acceptance of both online and offline digital euro transactions, with the exception of payments performed at a distance that are not suitable for offline payments (e.g. e-commerce)? If so, do Member States agree with the drafting suggestions?

2.2. Acceptance of payments not initiated at the point of interaction

In the discussion so far, Member States have raised two central questions concerning the legal tender status of the digital euro and its implications for merchants' obligations to accept payments. These points are critical in determining how the digital euro will be integrated into the broader payment landscape, especially considering the varying business models of merchants.

The first question is whether the legal tender status creates an obligation on the payee to offer one or several points of interaction.

The Commission proposal does not specify the payment instruments and communication technologies that the payee must support in order to meet its acceptance obligation, in line with the consolidated principle of technological neutrality adhered to by the EU legislator.³ It also takes into account the fact that some merchants only distribute their goods and services in a physical store, others only via the internet and others via both. The payment instruments and communication technologies they make available depend on the distribution channels chosen.

³ See *inter alia* recital 9 of Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (OJ L 150, 9.6.2023, p. 40–205): 'Union legislative acts on financial services should be guided by the principles of 'same activities, same risks, same rules' and of *technology neutrality* [emphasis added].'

Moreover, the Commission proposal does not specify how to understand the mandatory acceptance obligation with regard to different points of interaction (POS – point of sale, e-commerce, m-commerce). Taking this into account, to clarify the consequences of mandatory acceptance in those situations, it would be useful to be explicit about whether a payee would be obliged to and would have to be able to accept digital euro transactions through several points of interaction.

To address this issue, the Presidency suggests the following clarifications:

- merchants that only operate at the POS would not need to acquire the technology necessary to support e-commerce payments;
- merchants that only operate via e-commerce would not need to acquire the technology necessary to support POS payments;
- merchants that operate both at POS and e-commerce would need to accept digital euro through both points of interaction.

If the above clarification is to be accepted and confirmed by Member States, it may be necessary to make the necessary changes to the legal text.

The second question relates to the view of some Member States that the mandatory acceptance of digital euro should not apply to enterprises that only offer payments that are not initiated at the point of interaction, regardless of the size of the enterprise.

Article 9(a) of the proposed Regulation exempts microenterprises and non-profit entities from the mandatory acceptance of the digital euro on the understanding that they remain obliged to accept euro cash and on condition that they do not accept comparable digital means of payment at the point of interaction⁴. These entities are therefore not required to accept digital euro payments if they only accept cash. For the purpose of that provision, SEPA credit transfers or direct debits not initiated at the point of interaction (such as invoice payments via online banking service) are not considered to be comparable digital means of payment.

All other enterprises that act as payees, without prejudice to the exceptions set out in Article 9(b) and 9(d), are obliged to accept payments in digital euro. In this regard, to fulfil their obligations as regards legal tender, in general payees need to make available to payers one or more points of interaction that allow them to make online and offline digital euro payments, depending on the particular environment of the merchant or transaction (physical or e-commerce). But where a payee sends a bill to the payer's postal or email address, for instance (remote environment), an alternative to providing a point of interaction could be to provide the payer with the option to pay

⁴ Spanish Presidency drafting suggestion: "comparable digital means of payment" means digital means payment, including debit card payment and instant payment at the point of interaction but excluding credit transfer and direct debit that are not initiated at the point of interaction";

Belgian Presidency drafting suggestion: 'comparable digital means of payment mean all payment instruments that may be used in a digital environment where the initiation of the payment takes place at the point of interaction and where the payment order is immediately processed in view of debiting the payer's payment account'.

A definition of 'point of interaction' is proposed, given its centrality in defining what is a comparable digital means of payment and hence the acceptance obligation on microenterprises and non-profit entities.

via a digital euro transfer (which would be a category of digital euro payments that is not initiated at the point of interaction). In that case, however, the scope of the limits to merchant fees in Article 17 would have to be addressed, as that provision could be interpreted as not applying to digital euro payments not initiated at a point of interaction. This would mean that if merchants, excluding microenterprises, had to pay fees to receive digital euro payments though a digital euro transfer not initiated at a point of interaction, there could be a risk that those merchants would pay unjustified or disproportionate fees for digital euro payments not initiated at the point of interaction, where not explicitly capped by the Regulation.

The Member States in question propose exempting from mandatory acceptance enterprises not already covered in Article 9(a) which do not accept payments at any point of interaction.

However, this option may not be legally sound. First, it would be a contingent 'obligation' that could be circumvented by its addressees simply by ceasing to accept payments at the point of interaction, at any given time. Secondly, it seems difficult to conceive of a valid ground of general interest that could justify such a broad restriction on the mandatory acceptance of the digital euro, which would be made dependent on the free commercial decisions of undertakings, or to justify its proportionality, as the reasons justifying the exception for micro-enterprises or non-profit entities are absent in this case.

To provide further clarity, a definition of 'point of interaction' is proposed below.

Article 2(x)

Point of interaction (POI): 'The initial point in the physical or virtual merchant environment where data is exchanged to enable a payer to perform a payment transaction. Points of interaction may be attended or unattended.'

Question 3. Do Member States consider that payees subject to the acceptance obligation should be required to accept digital euro payments through the point(s) of interaction through which they accept private payments (and those points only)?

Question 4. Do Member States agree that enterprises which do not offer the possibility to make payments at the point of interaction and are not covered by the exception in Article 9(a) could not be required to accept digital euro payments, or do they disagree with this proposal, taking into account that its legality could be questioned? Could the concerns of the relevant Member States be addressed in another manner, e.g. by capping the fees that could be charged to merchants for digital euro transfers not initiated at the point of interaction so that these payees are not at risk of being overcharged?

Question 5. Do Member States agree with the proposed definition of 'point of interaction'?

2.3. Clarification that payees accepting credit cards are required to accept digital euro, even where these would not be considered a comparable digital means of payment for compensation model purposes

The draft regulation refers to the concept of comparable means of payments for two different purposes:

1. Compensation model: comparable means of payment are referred to as a basis for regulating the merchant service charge or inter-PSP in order to avoid excessive charges for merchants subject to the obligation to accept the digital euro.
2. Exceptions to the obligation to accept the digital euro: comparable means of payment are referred to as a means to ensure that the obligation to accept digital euro payments will not apply to microenterprises and non-profit legal entities which do not accept comparable means of payment.

Discussions under previous presidencies reflected a consensus that credit cards should not be considered a comparable means of payment for compensation model purposes, since they comprise a broader set of services, while merchants subject to the Article 9(a) exception which would only be accepting credit cards would also be required to accept digital euro. The suggested redrafting of Article 9(a) below reflects this.

Article 9

By way of derogation from Article 7(3) and Article 8, a payee shall be entitled to refuse digital euro in any of the following cases:

(a) where the payee is an enterprise which employs fewer than 10 persons or whose annual turnover or annual balance sheet total does not exceed EUR 2 million, or is a non-profit legal entity as defined in in Article 2, point (18), of Regulation (EU) 2021/695 of the European Parliament and of the Council, unless it accepts comparable digital means of payment initiated **at the point of interaction or credit card payments;**

9? *Question 6. Do Member States agree with the suggested redrafting of Article*

Annex

Drafting suggestions by previous presidencies

Article 9

By way of derogation from Article 7(3) and Article 8, a payee shall be entitled to refuse digital euro in any of the following cases:

- a) where the payee is an enterprise **or a self-employed person** which employs fewer than 10 persons or whose annual turnover or annual balance sheet total does not exceed EUR 2 million, or ~~is~~ a non-profit legal entity as defined in in Article 2, point (18), of Regulation (EU) 2021/695 **of the European Parliament and of the Council**, unless it accepts comparable digital means of payment **initiated at the point of interaction**;
- b) where a refusal is made in good faith and where such refusal is based on legitimate and temporary grounds in line with the principle of proportionality in view of concrete circumstances beyond the control of the payee;
- c) where the payee is a natural person acting in the course of a purely personal or household activity;
- d) where, prior to the payment, the payee has agreed with the payer on a different means of payment, subject to Article 10.

For the purposes of point (b), the burden of proof to establish that legitimate and temporary grounds existed in a particular case and that the refusal was proportionate shall be on the payee.

Recital 18:

Since the digital euro requires the capacity to accept digital means of payment, imposing an obligation of mandatory acceptance of payments in digital euro on all payees could be disproportionate. To this end, exceptions to the mandatory acceptance of payments in digital euro should be provided for natural persons acting in the course of a purely personal or household activity. Exceptions to mandatory acceptance should also be provided for microenterprises **and self-employed persons**, which are particularly important in the euro area for the development of entrepreneurship job creation and innovation, playing a vital role in shaping the economy. Union policies and actions should reduce regulatory burdens for enterprises of this size. Exceptions to mandatory acceptance should also be provided for non-profit legal entities which promote the public interest and serve the public good performing a variety of goals of societal interest, including equity, education, health, environmental protection and human rights. For microenterprises, non-profit legal entities **and self-employed persons**, the acquisition of the required infrastructure and the acceptance costs would be disproportionate. They should therefore be exempted from the obligation to accept payments in digital euro. In such cases, other means for the settlement of monetary debts should remain available. Nevertheless, microenterprises, non-profit legal entities **and self-employed persons** that accept comparable digital means of payment from payers should be subject to the mandatory acceptance of payments in digital euro. Comparable digital means of payment, **for this purpose, refers to digital payments initiated at the point of interaction. This should include direct debits, credit transfers (also instant) initiated at the point of interaction, debit card payments and credit card payments should include debit card payment or instant payment or other future technological**

~~solutions used at the point of interaction~~, but should exclude credit transfers and direct debits that are not initiated at the point of interaction. Microenterprises, non-profit legal entities and self-employed persons that do not accept comparable digital means of payment from their payers in settlement of a debt (e.g. they only accept euro banknotes and coins), but may use digital payments in settlement of a debt to their payees (e.g. they pay with credit transfers), should not be subject to the mandatory acceptance of payments in digital euro. Finally, a payee may also refuse a payment in digital euro if the refusal is made in good faith and if the payee justifies the refusal on legitimate and temporary grounds, proportionate to concrete circumstances beyond its control, leading to an impossibility to accept payments in digital euro at the relevant time of the transaction, such as a power outage in the case of online digital euro payment transactions, or a defective device in the case of offline or online digital euro payment transactions.