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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 30 October 2025 - Presidency discussion note on Article 33

Danish Presidency
Council of the European Union

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Presidency discussion note on Article 33

30 October 2025

Working Party on Financial Services and the Banking Union

Proposal for a regulation on the establishment of the digital euro
Meeting on 30 October 2025

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Introduction

Article 33 aims to ensure fair, reasonable and non-discriminatory (FRAND) access to the hardware and software features in mobile devices, that are necessary for the processing of digital euro transactions. **The FRAND terms are intended to prevent discriminatory or excessive pricing for PSPs, as well as refusals to grant access to necessary components, thereby enabling the use of digital euro on mobile devices by all digital euro users.**

Article 33 establishes obligations for original equipment manufacturers (OEMs) of mobile devices and providers of electronic communication services to ensure that providers of front-end solutions, European Digital Identity Wallets, and third-party technical support providers acting on their behalf, are granted effective interoperability with, and access to, the hardware and software features necessary for the processing of digital euro payment transactions (i.e. near-field communication (NFC) antennas and secure elements). According to Article 33, such access must be provided on fair, reasonable and non-discriminatory (FRAND) terms – without prejudice to the application of Article 6(7) of the Digital Markets Act (DMA) which requires gatekeepers to allow third-parties, free of charge, effective interoperability with the same hardware and software features accessed or controlled via the operating system of the designated gatekeeper.

The Presidency notes that a key concern with Article 33 in its current form is, that it might fail to ensure the intended level of FRAND access to both hardware and software. If this is to be the case, it could place PSPs in an unequal bargaining position vis-à-vis OEMs, potentially leading to exclusionary practices or unfair charges for these components, as well as compromising the availability of digital euro mobile payments, and ultimately the effectiveness of its legal tender status.

The Presidency would like to recall that Article 33 was discussed at the July 2025 CWP, on the background of the technical seminar held on the 30. June. In that regard, it was discussed whether the FRAND framework is sufficient to ensure that PSPs will have sufficient and equitable access to the necessary software and hardware components, in particular access to secure environments (SE) which are essential for enabling offline payments. Furthermore, there was a discussion around the fact that these SEs typically only are available on newer mobile devices, meaning that not all mobile device users would have access to digital euro on their mobile device.

Building on the comments received from Member States, **the Presidency has refined the wording of Article 33 and the accompanying recital**, with the aim of addressing the concerns raised as well as enhancing legal clarity.

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Chapter I

1. Specifying the scope of Article 33

The Presidency recalls that, at the July CWP meeting, it was proposed to introduce an additional formulation in Article 33 to cover a broader range of requirements[1]. The Presidency noted broad support among Member States for highlighting that Article 33 should encompass a wide set of functional and security requirements relevant for offline digital euro payments. At the same time, it was noted that these requirements could be more appropriately elaborated in the recital rather in the operative text, in order to avoid giving the impression of an exhaustive list. Accordingly, **the Presidency proposes to maintain a general formulation in the article to cover all relevant requirements, while providing further clarification and illustrative elements in the corresponding recital.**

In this context, recital 69 further elaborates on the objectives underpinning these obligations. The Presidency proposes to clarify in the recital that the requirements for hardware and software features are intended to safeguard users of the digital euro, preserve the integrity of the instrument, and ensure its secure, smooth and efficient functioning. The Presidency also proposes to specify that the applicable security standards should cover all critical processes involved in digital-euro payment transactions, including the provision of software and the secure storage, transfer and processing of data.

Questions 1-2 to Member States:

Q1*. Do Member States agree with the Presidency's proposal to Article 33(1)?*

Q2*. Do Member States agree with the Presidency's proposal to Recital 69?*

[1] The suggestion from the July meeting implied an addition of "storing and transferring data … transactions, including the storage and transfer of data".

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Drafting suggestions

BE PCY in black
DK PCY in green

Article 33 - Fair, reasonable and non-discriminatory access to mobile devices

1. Without prejudice to Article 6 paragraph (7) of Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828, original equipment manufacturers of mobile devices and providers of electronic communication services within the meaning of Article 2 (1) Directive (EU) 2018/1972[27] shall allow providers of front end ~~services~~ **solutions,** ~~and~~ providers of European Digital Identity Wallets **and third-party technical support providers acting on their behalf** effective interoperability with, and access for the purposes of interoperability to, the hardware features and software features **that are** necessary **for the secure** ~~**for** storing and transferring data **to process**~~ **processing and execution of** online or offline digital euro **payment** transactions on fair, reasonable and non-discriminatory terms. **The terms of access shall not depend on the services offered by original equipment manufacturers of mobile devices and providers of electronic communication services.**

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Recital 69

(69) To process digital euro payments online or offline, it is essential that **front-end** ~~**service**~~**solution** providers for the digital euro and issuers of European Digital Identity Wallets obtain access to near field communication technology (NFC) on mobile devices. These components include, in particular but not exclusively, NFC antennas and the so-called secure elements of mobile devices (e.g.: Universal Integrated Circuit Card (UICC), embedded SE (eSE), and microSD etc). It is therefore necessary to ensure that whenever needed to provide digital euro services, original equipment manufacturers of mobile devices or providers of electronic communication services would not refuse access to NFC antennas and secure elements. Central bank money with legal tender should be widely accessible. To ensure this also in the digital economy, providers of front-end ~~**services**~~ **solutions** for the digital euro and operators of European Digital Identity Wallets shall be entitled to store software on relevant mobile devices' hardware in order to make

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transactions with digital euro technically possible both online and offline. For this purpose, original equipment manufacturers of mobile devices and providers of electronic communication services should be obliged to provide access on fair, reasonable and non-discriminatory terms to all hardware and software components when needed for online and offline digital euro transactions. **In case of disputes, the general conditions established by original equipment manufacturers of mobile devices and providers of electronic communication services should identify an appropriate European Union-based alternative dispute settlement mechanism. Such a mechanism should offer an adequate, independent, impartial, transparent and effective means of resolving disputes between the parties.**

In all instances, such operators would be obliged to provide adequate capacity on relevant hardware and software features in mobile devices to process online digital euro payment transactions and for storing digital euros on mobile devices for offline digital euro payment transactions. This obligation should be without prejudice to Article 6 paragraph (7) of Regulation (EU) 2022/1925, which obliges gatekeepers to provide, free of charge, effective interoperability with, and access for the purposes of interoperability to, the operating system, hardware or software features of mobile devices, which is applicable to existing and new digital means of payments, including the digital euro. **To protect digital euro users, maintain the integrity of the digital euro, and ensure smooth and efficient functioning of the digital euro, a high security standard should apply to online and offline digital euro. This high security standard should apply to all critical processes concerning online and offline digital euro payment transactions including all operations that are needed to securely store, transfer and otherwise process data.**

2. Specifying the technical requirements for OEMs and MNOs

The Presidency recalls that a **majority of Member States have underlined the importance of further specifying the specific hardware and software features** to be covered by the obligations set out in Article 33, as well as the modalities for ensuring effective fair access. This should be seen in the light of the requirement in Article 23(1), implying that the offline digital euro should be available from the initial issuance of the digital euro.

To address this, **the Presidency proposes a new paragraph 4 in Article 33 obliging the ECB to adopt reference standards, technical specifications and procedures** relating to the software and hardware components necessary for the **security** of digital euro payment transactions. Furthermore, **the Presidency proposes a new paragraph 4a in Article 33 empowering the Commission, with the technical assistance of the ECB, to adopt implementing acts concerning the interoperability and access** specifying the measures that the original equipment manufacturers of mobile devices and providers of electronic

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communication services are to implement in order to effectively comply with the obligations laid down in Article 33(1).

The obligation would aim at enabling the ECB and the Commission to provide greater clarity and certainty for all stakeholders involved in the digital euro ecosystem. By establishing clear and comprehensive standards, the ECB and Commission would ensure clarity for PSPs and OEMs/MNOs in relation to which technical requirements that must be met to process both online and offline digital euro payments. This approach aims to reduce ambiguity and ensure consistent implementation across Member States.
The Presidency notes that, for legal reasons, the security standards to be set out in the rulebook would be addressed to PSPs, while OEMs and providers of electronic communication services would not be directly subject to the rulebook itself. Therefore, **the Presidency proposes a new paragraph 5 in Article 33 to set out that OEMs and providers of electronic communication services shall comply with the standards, technical specifications and procedures established by the ECB** under the proposed paragraph 4. This addition aims at ensuring that all relevant actors, including OEMs, and providers of electronic communication services, have access to and comply with the necessary technical infrastructure, which is required for the proper functioning of the digital euro. By aligning these entities to adhere to ECB's standards and procedures adopted pursuant Article 5(2), the proposal seeks to support a harmonised and secure approach.

The Presidency recalls that several **Member States have emphasised the importance of clear implementation timelines** to ensure coordinated preparation ahead of the potential issuance of the digital euro. To allow OEMs and mobile network operators sufficient time to prepare their general conditions of interoperability and access in accordance with Article 33(3), **the Presidency proposes that these conditions should be published no later than [12 months] after the adoption of the Regulation**.

Furthermore, the Presidency notes that, in accordance with Article 33(3), the published general conditions of interoperability and access should include a Union-based alternative dispute settlement mechanism. To ensure timely resolution and predictability, **the Presidency suggests introducing a procedural deadline requiring the dispute settlement mechanism to reach a decision within [90] days of receiving a request**, drawing inspiration from Article 10 of the Data Act.

Question 3 to Member States:

Q3*. Do Member States agree with the Presidency's proposed new paragraphs 4 and 5, and the additions to paragraph 3?*

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Drafting suggestions

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Article 33 - Fair, reasonable and non-discriminatory access to mobile devices

[…]

3. For the purpose of applying fair, reasonable and non-discriminatory terms pursuant to paragraph 1, original equipment manufacturers of mobile devices and providers of electronic communication services referred to in paragraph 1 shall publish general conditions of effective interoperability and access. **They shall make publicly available the general conditions of interoperability and access referred to in this paragraph no later than [twelve] months after the entry into force of this Regulation**

Such general conditions shall include a ~~**European Union-based**~~ alternative dispute settlement mechanism **based in the territory of the European Union**. The **decisions of the** dispute settlement ~~**mechanism**~~ **body** shall be without prejudice to the right to seek redress before judicial authorities in accordance with Union and national law. **The relevant dispute settlement body shall adopt its decision on a matter referred to it within [90] days of receipt of a request submitted in accordance with this paragraph. The decision shall be in writing or on a durable medium and shall be supported by a statement of reasons.**

4. As part of the detailed measures, rules and standards referred to in Article 5(2), the European Central Bank, shall adopt reference standards, technical specifications and procedures concerning software and hardware that ensure that payment service providers can securely process online and offline digital euro payment transactions. The ECB shall adopt the reference standards, technical specifications and procedures [6 months] within after adoption of the Regulation.

4a. For the purpose of ensuring effective interoperability and access for providers of front end solutions, providers of European Digital Identity Wallets and third-party technical support providers acting on their behalf in accordance with paragraph 1, the Commission, with the technical assistance of the ECB, is empowered to adopt implementing acts, specifying the measures that the original equipment manufacturers of mobile devices and providers of electronic communication services referred to in paragraph 1 are to implement in order to effectively comply with the obligations laid down in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39. The Commission shall adopt implementing acts within [6] months after adoption of the Regulation.

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5.Original equipment manufacturers of mobile devices and providers of electronic communication services referred to in paragraph 1 shall comply with the standards, technical specifications and procedures referred to in paragraph 4.

[…]

3. Clarification of FRAND terms

The Presidency notes that several **Member States have requested further clarification regarding the interpretation and application of the requirement for fair, reasonable and non-discriminatory (FRAND) terms** under Article 33. Member States have underlined the importance of a more detailed guidance going beyond the current wording of Article 33, in order to ensure a consistent and uniform understanding and implementation of FRAND obligations in the context of the digital euro across the euro area. Furthermore, several Member States have stressed that clear and enforceable FRAND access conditions are essential to ensure that payment service providers can offer both online and offline digital euro services from the first issuance. Others have highlighted the imbalance in negotiating power between payment service providers and large OEMs controlling the secure elements required for the digital euro, underlining the need for a framework that guarantees fair and equal access.

To this end, **the Presidency proposes a new paragraph 6 in Article 33 that would empower the Commission to adopt implementing acts that specify the meaning and application of FRAND terms in the context of the digital euro**. Such implementing acts would aim to reduce legal ambiguity, limit the risk of disputes or inconsistent enforcement, and support the effective introduction of the offline functionality referred to in Article 23(1).

Empowering the Commission to define the criteria for fair, reasonable and non-discriminatory access would also aim at addressing the negotiation imbalance between PSPs and large OEMs or MNOs. By setting clear and uniform requirements for access, PSPs would no longer need to negotiate such terms individually, thereby ensuring predictable and equitable conditions across the Union. This would in turn help guarantee that OEMs provide the necessary level of access for PSPs to offer offline digital euro services from the first issuance.

Furthermore, the Presidency notes that it is proposed that OEMs and providers of electronic communication services shall make publicly available the general conditions of interoperability and access referred to in this paragraph no later than twelve months after the adoption of the Regulation. To facilitate early preparation and enable these actors to meet their obligations, **the Presidency suggests introducing a timeline in Article 33(6)**

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requiring the Commission to specify the FRAND terms within [eight] months of the Regulation's adoption.

Question 4 to Member States:

***Q4**. Do Member States agree with the Presidency's proposal for a new paragraph 6?*

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Article 33 - Fair, reasonable and non-discriminatory access to mobile devices

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6. For the purpose of applying fair, reasonable and non-discriminatory terms pursuant to paragraph 1, the Commission shall, within [eight] months from the entry into force of this Regulation adopt implementing acts on the meaning and application of fair, reasonable and non-discriminatory terms referred to in paragraph 1, including the criteria to be respected when determining whether terms are fair, reasonable and non-discriminatory. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39.

4. Governance and enforcement of FRAND

The Presidency recalls that the digital euro will constitute a single and uniform means of payment in the euro area, issued as legal tender under Article 133 TFEU. As such, its **usability and acceptance must be ensured uniformly across all Member States from the moment of issuance**. This requires that PSPs have fair, reasonable and non-discriminatory access to the secure environments of mobile devices, which is essential to safeguard the functioning of the digital euro as public money and to ensure equal conditions for users throughout the euro area.

The Presidency notes that some Member States have underlined that entities such as OEMs and MNOs are not traditionally supervised by financial services competent authorities. The Presidency further notes that these entities are also not governed by the digital euro scheme rulebook and are therefore not subject to its enforcement mechanisms. Moreover, as highlighted by the ECB during the technical seminar in June 2025 and supported by available data, over 70% of mobile devices currently used in the Union are not covered by the obligations under the DMA and may therefore fall outside existing Union-level frameworks that facilitate monitoring and enforcement of access obligations. As a result, most devices

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relevant for the digital euro would not be subject to a coherent Union-wide mechanism ensuring non-discriminatory access. **In the absence of such a framework, enforcement would depend on a patchwork of national regimes, increasing the risk of divergent interpretations and inconsistent application across Member States.**

The Presidency recalls that several Member States noted that, in light of the legal tender status of the digital euro, it is essential that the obligations established under Article 33 be applied and enforced uniformly across the euro area. Whereas the DMA provide the Commission with direct supervisory and enforcement powers to ensure compliance by large cross-border digital actors, no comparable framework currently exists for the mobile device ecosystem that will underpin the use of the digital euro.

In this context, and in light of the comments expressed by Member States, as well as considering the Presidency's proposal to empower the Commission to adopt implementing acts specifying the criteria for determining whether access conditions are fair, reasonable and non-discriminatory, **the Presidency considers it appropriate to coordinate supervision and enforcement at Union level**.

The Presidency proposes a new paragraph 7, providing a central coordinating role for the Commission in monitoring compliance with Article 33. National competent authorities designated under Article 6 would continue to support this process through monitoring and reporting, while overall coordination would rest with the Commission. This approach would reflect the logic of other Union frameworks while being adapted to the specific legal and monetary character of the digital euro under Article 133 TFEU.

A coordinated supervisory structure at Union level, led by the Commission in cooperation with national competent authorities, would further aim at contributing to the consistent and timely enforcement of access obligations, while maintaining a proportionate balance between Union and national responsibilities. In addition, the Presidency notes that stakeholder engagement, including with standardisation bodies and in particular coordination with the European Digital Identity Cooperation Group, should be a further aspect of this supervisory structure, to ensure a coherent and harmonised approach and to facilitate synergies with other relevant initiatives, such as the European Digital Identity Wallet.

The Presidency notes that such an approach would seek to support both the legal tender character and the public-interest objectives of the digital euro by ensuring that secure and interoperable access to mobile devices is available throughout the Union. This would in turn facilitate the deployment of the offline functionality referred to in Article 23 and strengthen users' confidence in the accessibility, security and reliability of the digital euro as a common European means of payment.

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Questions 5-6 to Member States:

Q5*. Do Member States agree with the Presidency's proposal for a new paragraph 7?*

Q6. *Do Member States have other comments to Article 33?*

Drafting suggestions

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Recital

(XY) In order to ensure the uniform and effective application of the obligation to provide access on fair, reasonable and non-discriminatory terms referred to in this Regulation, and taking into account the specific nature of the digital euro as legal tender within the meaning of Article 133 of the Treaty on the Functioning of the European Union, it is appropriate to lay down a Union-level framework specifying the meaning and application of those terms. The Commission should therefore be empowered to adopt implementing acts establishing common criteria for assessing whether the conditions for access to the hardware and software features of mobile devices are fair, reasonable and non-discriminatory. Those criteria should in particular reflect the need to ensure secure and continuous access for payment service providers and digital euro user. To guarantee coherence and legal certainty across the Union, the Commission should, in cooperation with the competent authorities designated pursuant to this Regulation, coordinate at Union level the supervision and enforcement of the obligations laid down in this Article, facilitate cooperation and the exchange of information among those authorities, and, where appropriate, issue guidelines, recommendations or opinions to ensure their consistent application, without prejudice to the responsibilities of national competent authorities under this Regulation. As part of this governance framework, coordination with relevant stakeholders, including the European Digital Identity Cooperation Group established pursuant to Regulation (EU) No 910/2014, should be ensured to facilitate effective enforcement of the access obligations and identify and leverage synergies.

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7. The Commission shall, in cooperation with the competent authorities designated to ensure compliance with this Article pursuant to Article 6, coordinate at Union level the supervision and enforcement of this Article. For that purpose, the Commission shall facilitate cooperation and the exchange of information between those authorities and

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may, where appropriate, issue guidelines, recommendations or opinions to ensure the consistent application of this Article throughout the Union.