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From:	General Secretariat of the Council
To:	Working Party on Financial Services and the Banking Union (Digital Euro Package) Financial Services Attachés

Subject:	Digital euro WP meeting on 15 Nov. 2023 - Presidency discussion note on the Legal Tender of the digital euro
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Council Working Party on Financial Services and the Banking Union

Regulation on the establishment of the digital euro



Presidency note 1 for the Council Working Party - 15 November *Discussion note on Legal Tender of the Digital Euro*

1) Situation of the discussions on Legal Tender of the Digital Euro

There is a consensus among MSs that the digital euro, as central bank money, should have legal tender status, that means: mandatory acceptance, at full face value and with the power to discharge from a payment obligation.

The impact assessment that accompanies the digital euro proposal recommends to regulate the legal tender status of cash in parallel with the legal tender status of the digital euro to ensure coherence in the regulatory treatment of the two forms of central bank money.

For this reason, in the second WP that we had jointly on the Digital Euro and the Legal Tender of Banknotes and Coins Regulations on September 25th, we discussed the legal tender coherence and consistency of euro cash and digital euro (Chapter III of the Digital Euro Regulation).

From there on, there has been one more CWP, on October 25th, where the legal tender of cash has been discussed independently to move forward more quickly. The idea is to **extrapolate most elements that are agreed upon cash to the digital euro, except for those elements that should have a different treatment considering the nature of the digital euro.**

2) Elements already discussed

Regarding coherence, two elements were discussed in the September working party:

- ***The territorial scope of the legal tender status*** in article 8, which is not contained in the cash legal tender Regulation.
- ***The prohibition of the unilateral exclusion of payments in the digital euro*** in article 10 which is also not contained in the Cash Legal Tender Regulation.

The introduction of these elements in the Cash Legal Tender Regulation is being discussed. However, there seemed to be a certain consensus among Member States on the usefulness of maintaining these articles in the Digital Euro Regulation.

- As the Commission explained, the nature of the online transactions, which do not necessarily take place in proximity, makes it desirable to determine the ***territorial scope*** where these payments will have legal tender status. Residence or establishment is a reasonable criterion. As it is established for online payments, it

makes sense to foresee it for offline transactions as well, but in this case taking into account the place of the transaction, since they are proximity payments.

- Regarding **unilateral exclusions**, in contrast to cash which has been around for a long period of time where different practices have evolved in different MSs, the digital euro is a new means of payment. To foster its adoption and ensure a homogeneous treatment of the single currency in the euro area it seems reasonable to introduce a prohibition of exclusions that have not been individually negotiated. As explained by the Council Legal Services, this prohibition does not interfere with the principle of contractual freedom.

3) Elements regarding the Legal Tender of the Digital Euro still to be tackled

Exceptions to the principle of mandatory acceptance (article 9 of Digital Euro Regulation and article 5 of the LT of cash Regulation) and **additional exceptions of monetary law nature** (article 11 of the Digital Euro Regulation and article 6 of the LT of cash Regulation).

There is parallelism in those elements where the nature of the payment is not relevant to justify the exception, that is the case of:

- Refusals made in good faith based on legitimate and temporary grounds in line with the principle of proportionality, where the burden of proof shall be on the payee (article 9b of DER and article 5 of CLTR).
- Bilateral agreement on a different means of payment between the payee and the payer prior to the payment.
- Additional exceptions of monetary law nature that the Commission is empowered to adopt by delegated acts.

Specific exceptions apply only to cash or only to the digital euro. In digital euro payments:

- According to article 9 (a) of the DER: The payee is entitled to refuse a payment in digital euros when:
 - o The payee is:
 - (i) a microenterprise (enterprise that employs fewer than 10 persons or whose annual turnover or annual balance sheet total does not exceed EUR 2 million)¹. As already clarified by the COM, self-employed natural persons should also fall within this exception, this could be clarified in the text or the recitals.
 - Or, (ii) a non-profit legal entity;
 - o And it does not accept comparable digital means of payment.
- According to article 9 (c) of the DER, the payee can also refuse to accept digital euros when the payee is a natural person acting in the course of a purely personal or household activity.

¹ The thresholds established in the Regulation proposal are standard practise and have been taken from the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises ([EUR-Lex - 32003H0361 - EN - EUR-Lex \(europa.eu\)](#)).

Article 6 of the DER foresees that MSs shall:

- Designate **competent authorities** to ensure compliance with the legal tender status (similar to article 9.1. of LTCR).
- Lay down the **rules on penalties applicable to infringements of the legal tender status**, according to specific principles, and take the measures necessary to ensure that these rules are implemented (similar to article 12 of the LTCR).

Questions to MS

1. Regarding the exception in article 9 (a), as agreed in the previous WP, MS believe it is more useful to determine the comparable means of payment separately for the legal tender acceptance and for the methodology to determine maximum fees. This would mean having to define the comparable means of payment to require acceptance of the digital euro for microenterprises and non-profit legal entities. This selection of means of payment should take into account the additional costs and operational burden that acceptance of digital euro payments would entail for merchants. This would depend on the technologies that would be needed to accept these payments. In its Opinion, the ECB would consider as comparable means of payment, for legal tender purposes, those payment instruments which may be used in a digital environment where the initiation takes place at the point of interaction. This would include direct debits initiated at the point of interaction, credit transfers (also instant) initiated at the point of interaction, debit card payments and credit card payments.
 - **What means of payment to MSs consider that should be included as comparable for this purpose?**
2. Regarding the additional exceptions of monetary law nature (of article 10 of the DER) and the penalties for infringements of legal tender status (of article 6 of the DER), the idea is to extrapolate the decisions taken for the Legal Tender of Cash to the digital euro, to ensure coherence.
 - **Do MSs agree with this approach?**
3. **Are there any other elements regarding legal tender status of the digital euro that have not yet been tackled and MSs would like to discuss?**