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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 - Informal (VTC) WP meeting on 23 Nov. 2023 - Presidency Note on Fees on digital euro payment services
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Council Working Party on Financial Services and the Banking Union

Regulation on the establishment of the digital euro



Presidency note 3 for the Council Working Party – 23 November *Fees on digital euro payment services*

1) Introduction

During this Council Working Party, the Presidency has the intention to present to MS what are the main points identified by the Presidency where there is a majority position on the CWP, related to fees regulated in article 17. The objective of this exercise is to be able to put together a Progress Report by the Spanish Presidency that takes note of the advances done during the semester, reflecting areas of agreement and pointing out those aspects where more work is needed during the next Presidencies.

2) Article 17.1: basic services

Article 17 deals with the “fees on digital euro payment services”.

According to the first paragraph, **basic services** of annex II shall be provided by PSPs **free of charge for natural persons** who are residents in the euro area, opened a digital euro account at the time they resided or are visitors in the euro area (not to those residing in a MS whose currency is not the euro or in third countries). There are three elements in this provision that generate controversy among MS: (i) provision free of charge, (ii) to natural persons and (iii) including visitors.

(i) Provision free of charge

A majority of MS support the general idea of having basic digital euro services provided for free, given the legal tender nature of the digital euro and its conception as a European public good. **MS in favor of the provision** believe the services should be free **to ensure wide access** to digital euro basic services, **preserve the legal tender nature** of the digital euro, supporting the role of the digital euro as a **tool to enhance financial inclusion**. The ECB is also in favour of a provision of these services without charge. A key economic principle of successful payment ecosystems is that “paying is free” for the payer.

However, the provision of basic services for free to certain categories of users may create undesirable effects in some market segments. For example, **ATM deployers** (or in PSD2 words, independent ATMs) obtain most of their revenue when charging clients for exchanging commercial bank money into cash¹. These actors have been key in many MS to ensure cash

¹ Also, ATM deployers are usually in contract with ASPSPs. They generally charge fees for ASPSPs. Pure ATM deployers would not likely to also provide digital euro services for the reasons stated in the paragraph. The main problem is that PSPs may suffer considerable losses if they need to swallow the fees they incur by operating their own ATM network and paying for external ATM providers.

availability and foster financial inclusion, in a context of less supply of ATMs, especially in rural areas. Therefore, it is not likely that ATM deployers decided to enter the digital euro market (they are not obliged to in any way, since they are not ASPSPs).

Also, one important consideration to make relates to the **cash withdrawal services offered by banks**. The cash withdrawal can be done both from traditional accounts and from digital euro payment accounts (defunding), which entails costs for PSPs due to cash handling. Whereas PSPs are allowed to charge for cash withdrawals from traditional accounts (and they usually do so when withdrawing from a different bank), they would not be able to do so with the digital euro account since defunding is a basic service of Annex 2. This could lead to users using digital euro accounts for cashing out their commercial bank money, leading to **arbitrage and squeeze out private services**.

Even if there is merit in providing most of the basic services for free, given the cost of cash withdrawals and the impact on financial inclusion and possible arbitrages, a solution could be to allow PSPs to charge a reasonable fee for digital euro cash withdrawals, but limited to what they charge for cash services involving non-digital euro payment accounts. In the end, we would be achieving the same degree of convertibility between central bank money and commercial bank money. However, this would also imply that the exchange of two means of legal tender may be subject to fees.

In the October CWP, the problem of some **P2P segments** was raised, since some Fintechs specializing in providing payment services to natural persons may not be able to recover costs. Nonetheless, we need to take into account that these business models usually work on the back of a broader strategy, consisting in binding clients to their ecosystem to later monetize the strategy by either processing data or selling other financial products. Indeed, the current practice in many European payment markets is that instant P2P payments are offered for free.

(ii) To all natural persons

As we have done in other parts of the text, it seems reasonable to exclude from this free provision of services **natural persons acting in a commercial capacity** (e.g. self-employed) to ensure that they do not have an advantage compared to merchants that operate through a legal entity. Referring to **natural persons acting as consumers** seems more appropriate. We have already proposed to introduce a definition of consumer based on PAD.

(iii) The inclusion of visitors

Some MS believe that the free of charge provision for visitors is not justified. As we have proposed when dealing with article 12 bis.3, we encourage the CWP to come back to this issue once the international role of the digital euro is discussed.

PCY Drafting suggestion:

Article 17.1. *For the purpose of Article 15(2), without prejudice to any possible fees charged on other digital euro payment services, payment services providers shall not charge fees to natural persons as referred to in Article ~~13~~ **12 bis**(1), points (a), (b) and (c), when acting*

as consumers, for the provision of the basic digital euro payment services referred to in Annex II.

By derogation from the first subparagraph, payment service providers may charge a reasonable fee for funding and defunding digital euros from or into euro cash. This charge shall not exceed the lowest amount charged by the payment service provider for funding and defunding a non-digital euro payment account from or to euro cash.

3) Article 17.2: Regulating the merchant service charge and the inter-PSP fee

The COM proposal includes the limitation of two specific fees in the digital euro market: the merchant service charge (MSC) and a part of the MSC, the inter-PSP fee.² In order to have the complete perspective in mind, it is important to highlight that there are other **prices in this market that are freely decided by the market**, such as the fees charged for non-digital euro services (including the monthly (package) fee of payment accounts), the fees for digital euro services provided to merchants and public administrations (except from when acquiring digital euro payments), the fees for those natural persons not covered by the basic services scope or the fees charged for those additional services not considered as basic.

Most MS agree with the foundational principle that the Regulation should introduce some rules to avoid that merchants and public administrations under the obligation to accept digital euro payments can become excessive. Also, some MS recall the objective of the digital euro project to create a payment system that provides for **lower prices to merchants**, since the savings produced in the scheme and settlement fees³ should lead to savings for PSPs, merchants and consumers.

The text of the Commission proposes to introduce a cap both on the overall MSC that the acquirer PSP will charge a merchant receiving digital euro payments and one of the component of the MSC, the inter-PSP fee that may emerge between PSPs (the acquirer PSP, serving the merchant transfers it to the distributing PSP serving the client). Even if there is a general understanding in the goal of achieving a cheaper digital means of payments, further work is needed in understanding the implications of regulating one of these fees, or both.

Some MS favour that there is a stronger **case for capping the inter-PSP**, replicating the experience undertaken with the 2015 Interchange Fee Regulation for payment cards. As some MS have put it forward, whereas a merchant can choose the acquirer PSP, the merchant is not able to choose the issuer PSP of the payer's digital euro wallet he is accepting. In this sense, merchants have more freedom to choose and there is competition

² The acquirer PSP charges merchants the MSC which is composed of the inter PSP fee and the acquirer's fee or margin.

³ Let's recall that the Eurosystem has repeatedly said that, being the digital euro public money, there will not be any fee related to the settlement infrastructure or the use of the scheme. This is a significant difference with today's markets for card payments.

in the acquirer market. In addition, the fee of the acquirer also depends on the services the merchant receives from the PSP, which can vary widely.

On the other hand, there are MS in favour of capping the MSC. There are arguments that state that the case for the IFR emerged from a concrete antitrust problem in the market for card payments, due to the low level of competition in the networks and the incentives of PSPs to issue payment cards, charging high interchange fees, and passing on those increases all the way through the payments chain up to the consumer prices⁴. Contrary to the explanation shown in Table 1, in the digital euro market we do not have a “scheme” competing for issuing banks by offering high fees. A second argument consider that, since the MSC is the sum of the inter-PSP fee and the acquirer PSP margin⁵, regulating only the inter-PSP fee does not guarantee the objective that the digital euro regulation seeks (lower prices for merchants). Therefore, some MS consider that by regulating the MSC, the inter-PSP can be disciplined later on by market forces. However, this last scenario may create winners and losers among PSPs, depending on their degree of participation in the issuer market and in the acquirer market. In this sense, capping the inter-PSP also could help to balance the economic rents in both markets but, again, the CWP needs to keep in sight what are the objectives that want to be achieved by the price intervention.

Table 1. What was the problem with interchange fees? (From the DG COMP website)

Interchange fees are normally set by operators of payment card schemes, such as Visa or MasterCard, or the banking community. Retailers have no possibility to influence the level of the fees, as they are not involved in the process.

Usually, competition leads to lower prices since companies compete by offering lower prices than their competitors. In the case of interchange fees, the opposite occurs. Since issuing banks benefit from interchange fee revenues, card schemes compete for the issuing banks by offering *higher* interchange fees. These fees are a cost for retailers which increase the price of their products. Interchange fees are therefore, indirectly, paid by consumers. Consumers and retailers are often unaware of the level of these fees. In addition, cardholders are encouraged through rewards offered by their bank to use cards that generate higher fees for the bank. This has consequences for both retailers and consumers:

If a retailer refuses commonly-used cards, there is a risk that consumers would choose to go to its competitors. Individual retailers tend thus to accept high costs for card payments to keep and grow their sales.

Retailers recover higher costs due to ever increasing interchange fees by increasing retail prices. As a result, the prices increase for all consumers, including those who pay cash or use cheaper payment cards, because the higher fees of more expensive cards are spread out and passed on to all.

The Regulation on interchange fees for card-based payment transactions aims at changing this situation to the benefit of retailers and consumers.

⁴ See Table 1 in page 4.

⁵ In card payments it also adds the scheme fee or other additional on-top services (such as Apple Pay).

As it has been put forward by all the relevant actors, this is a key topic in the design of the digital euro, and the CWP should take the necessary time to understand all the implications and explore all the relevant avenues. In this sense, the Presidency reminds MS that other options can be on the table, such as a staggered approach for one or both fees (monitoring before regulating) or different approaches, such as increasing price transparency through scoreboards and reporting obligations.

Beyond the *basic* debate on whether to regulate or not and, if yes, what should be regulated, there are related debates that are also key in the architecture of the digital euro, and where further reflection is needed among all the participants. One of those aspects relates to the **requirement on price caps to be homogeneous through the euro area**. Some MS consider that uniformity should be a long-term goal of the regulators since it is not realistic to achieve it from the beginning, especially when fixed and variable costs are not clear until the project is running. On the other hand, other MS consider that the digital euro should have similar conditions throughout the euro area due to its own special nature.

Once MS have a common understanding of what needs to be done regarding price regulation, and if that is the case, it would be appropriate to further define a **methodology** to fix that cap. It is not yet clear to MS that both methodologies contained in the proposal (based on costs and based on comparable digital means of payments) are suitable for capping both the inter-PSP fee and the MSC. In any case, MS have expressed their views that, at least for the first releases of the digital euro, a methodology more aligned with the “comparable means of payments” philosophy would make more sense, since there will not be any consistent data available on costs. Also, regarding the definition of comparable means of payments, MS have expressed positive views on the proposal of the Presidency to link it to credit transfers (inc. instant) and direct debits initiated at the point of interaction, and debit cards. This notion would therefore exclude credit cards, since it is the understanding of most MS that these products offer further added services that justify different pricings.

4) Article 17.3, 4 and 5. Tasks conferred to the ECB

According to these paragraphs, the ECB shall monitor and collect the information on: (i) the relevant costs incurred by PSPs, (ii) the margin or profits applied by PSPs and (iii) the fees or charges on comparable means of payment and publish them periodically in an explanatory report (Article 17.3).

For this purpose, the ECB will require PSPs to provide information that should be certified by an independent auditor (Article 17.4).

The Regulation establishes a framework that should help the ECB in its task to monitor the information and to calculate three amounts (the relevant costs, the reasonable margin and the fees of comparable means of payment) (article 17.5).

In this case, the key element discussed is whether the ECB is the most adequate entity to carry out these fee monitoring and calculations via monitoring, collecting and publication of the fees of the selected most efficient PSPs based on the guidance of

the regulation. The Presidency highlights that the COM proposal does not give to the ECB a competence in “price regulation” but monitoring and statistical tasks.

Many MS believe that the ECB, as supervisor of financial entities and with a direct interest in the success of the digital euro (as it is part of its balance sheet) is not the most adequate institution to carry out all these tasks. These MS suggest conferring these tasks to other entities such as competition authorities (e.g., DG COMP), already involved in the control of prices in other areas. DG COMP is indeed competent as regards the Interchange Fee Regulation. However, let’s note at this point that, as we previously stated, the “competition law” considerations that appeared in the four-leg card payment market are not the reasons behind price regulation in the digital euro, which emerge from the political choice to have a European public good with legal tender status.

In its opinion, the ECB defends that the roles conferred to the different parties (Eurosystem, Commission, co-legislators) should reflect the respective Treaty competences.

- According to the ECB, within the framework of the Treaties, both the **substantive and formal responsibility to regulate fees** lies with the legislators and not with the ECB. This is to avoid a fragmentation of the internal market that would arise with divergent laws.
- **The ECB is ready to provide its technical support for the calculation of the amounts but believes that the Eurosystem is not entitled to determine the caps through that information.** The ECB has shown its willingness to assist co-legislators in the exercise of their competences through a consultative or technical role but rejects its entitlement to set the fees. The ECB’s task should be limited, in the ECB’s view, to: (i) monitoring the information, (ii) publishing the information and (iii) providing technical assistance in the methodology to calculate the amounts (without setting the fees). The final setting of the fees should be, in the ECB’s view, a task of the Commission through delegated acts.

The Presidency notes two elements here:

(a) The setting of fees:

There is wider consensus among MS and of the ECB of the lack of competence of the ECB to set these fees. The Commission considers that under the proposal the ECB would not be a price-setter, as it would only publish the amount on the basis of a given methodology. The Commission is open to further work on these objective criteria. In this respect the use of vague terms in level one regulation, like “reasonable margin of profit” is particularly problematic as it may amount to the ECB effectively setting the fees, even though the Regulation sets the fees *in abstracto*. Co-legislators should set a clear framework for the determination of the fees.

There are two options to determine who should then, based on this clear framework, adopt the formal act that set the fees:

- On the one hand, the Commission through delegated acts with the basis of preserving the correct functioning of the internal market, assisted by the technical support of the ECB, with more information at its disposal on this matter.

- On the other hand, the ECB, within the framework of co-legislators in the Regulation (maybe with more concrete criteria), using the information that the Eurosystem has at its disposal as supervisor of financial markets and as part of the monitoring tasks. Let's recall that the COM proposal is a *shall* provision, indicating that the competence falls within the co-legislators.

(b) The monitoring and publishing of fees:

There seems to be less controversy with the Eurosystem being in charge of monitoring the fees based on the information provided by PSPs and on periodically publishing this information. However, in this respect, the text of the regulation may need to be complemented to:

- Emphasize that this reporting would not entail the publication of individual PSP costs, fees and charges and that these amounts should not be inferable from the reporting activity.
- The need to introduce robust enforcement mechanisms to ensure that PSPs report to the competent authorities, so that the monitoring can be effective.