



Council of the European Union  
General Secretariat

**Brussels, 25 March 2025**

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**Interinstitutional files:**  
**2023/0208 (COD)**  
**2023/0212 (COD)**

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**WK 3947/2025 INIT**

**LIMITE**

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**ECOFIN**  
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## **WORKING DOCUMENT**

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<b>From:</b>	Presidency
<b>To:</b>	Working Party on Financial Services and the Banking Union (Digital Euro Package) Financial Services Attachés
<b>Subject:</b>	Single currency package - LTCR & Digital euro WP meeting on 31 March- 1 April - Presidency Discussion Note on alignment of euro cash and digital euro legal tender provisions

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WK 3947/2025 INIT

**LIMITE**

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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**  
**Legal Tender of Cash Regulation**  
*Brussels, 31 March*

**Presidency discussion note**  
**Discussion on the alignment of euro cash and digital euro legal tender provisions**

The issue of the digital euro's legal tender status has already been discussed several times at Council Working Party meetings. The most recent discussion took place at the January CWP meeting. In the past and at the first CWP meeting under the Polish Presidency, some Member States indicated that it would be useful and welcome to have a joint discussion on the legal tender status of both the digital euro and of cash. Against this background, this Presidency note presents the relevant provisions of the two regulations and aims to kick-start such a joint discussion in order to ensure alignment, while leaving room for certain differences in these provisions.

## **1. Provisions that are aligned or that do not need to be aligned**

Several provisions of the Proposal for the legal tender of cash (LTCR)<sup>1</sup> and the Digital euro proposal (DER)<sup>2</sup> are fully aligned and should remain so. These are identified as “category A” in the table in the Annex.

Moreover, in the Presidency's view, some provisions clearly do not need to be aligned, as the differences between euro cash and the digital euro justify the different wording of these provisions. These are identified as “category B” in the table in the Annex.

### **Questions for the Member States:**

*Q1. Do Member States agree with the allocation of the provisions to the two categories?*

## **2. Provisions where questions arise on the need for alignment between the LTCR and the DER**

This section discusses the provisions where there may be a need for alignment between the Proposal for the legal tender of cash and the Digital euro proposal. Member States are asked for their views regarding the need for alignment and potential adjustments in the respective provisions. These are identified as “category C” in the table in the Annex.

### **1) Definitions of ‘payer’ and ‘payee’ (Article 3 LTCR and Article 2 DER)**

Following a proposal under the Spanish Presidency, the definitions of ‘payer’ and ‘payee’ (Article 3(5) and (6) LTCR) were modified to clarify that each term refers to any natural or legal person, irrespective of its private or public nature. The justification for these amendments in the LTCR under the Spanish Presidency was simply to make it clear that the term ‘person’ encompasses both individuals and entities (whether public or private).

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<sup>1</sup> Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the legal tender of euro banknotes and coins – COM(2023) 364 final

<sup>2</sup> Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the establishment of the digital euro – COM(2023) 369 final

**Article 3 LTCR (ES Pcy change in red)**

5. 'payer' means any *natural or legal person, irrespective of its private or public nature, who makes a payment in euro cash;*

6. 'payee' means any *natural or legal person, irrespective of its private or public nature, who is the intended recipient of funds which have been the subject of a payment transaction in euro cash;*

Such a clarification has not been proposed in Article 2 DER. Therefore, the Presidency would like to ask Member States whether they see a potential need for alignment between the two regulations in this regard.

**Questions for the Member States:**

Q2. What are Member States' views on the above issues?

**2) Penalties (Article 12 LTCR and Article 6 DER)**

**Article 12 LTCR:** Member States *may* lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. (ES Pcy change in red)

**Article 6 DER:** The Member States whose currency is the euro *shall* lay down the rules on penalties applicable to infringements of Chapter III and Article 17 and shall take all measures necessary to ensure that these rules are implemented, including the power of competent authorities to access the necessary data.

Following a proposal under the Spanish presidency, Article 12 LTCR was modified to make the penalty regime for infringements of the regulation voluntary, introducing "may" instead of the "shall" provision contained in the Commission proposal. This change was supported by a majority of Member States. As regards the Digital Euro Regulation, in the January Council Working Party, four Member States argued against an obligation for Member States to set out and impose penalties for violations of DER legal tender provisions. According to these Member States, there is insufficient evidence that penalties could ensure wide acceptance for a legal tender means of payment and that, on the contrary, such penalties could be perceived as forcing the digital euro upon people. It was also pointed out that a penalty regime could incur high administrative costs related to monitoring, investigating and prosecuting fines. These Member States would therefore also favour a "may" provision in Article 6 DER, at least with reference to infringements of Chapter III, which would result in the closer alignment of the DER and LTCR as regards the penalty regime.

It can be argued that without an obligatory penalty regime, which seems to be a standard clause in many Union acts in order to ensure their effective application, the

legal tender status of either cash or the digital euro could be ineffective and devoid of meaning. In addition, the effectiveness of these Union acts would be compromised. Since individual action before national courts is highly unlikely in such cases, administrative inspections and the possibility of sanctions seem indispensable to ensure the effectiveness of both acts. It may also be difficult to justify a differing treatment of cash and the digital euro as regards the penalty regime. Therefore, it is perhaps worth giving further consideration to the idea that both Article 12 LTCR and Article 6 DER should require Member States to lay down rules and effective, proportionate and deterrent penalties applicable to infringements of the respective legal tender provisions.

**Questions for the Member States:**

*Q3. What are Member States' views on the above issues?*

Beyond the obligatory versus voluntary nature of the respective penalty regimes, there are further differences that may or may not warrant alignment, as further detailed in the Annex. One such possible point of alignment would be to transpose the formulation “*Member States whose currency is the euro*” from Article 6 DER to Articles 9 and 12 LTCR or to delete it from Article 6 DER, given that it is not strictly necessary in legal terms. Another difference is the explicit reference to “*the power of competent authorities to access the necessary data*” in Article 6 DER, which may, however, be justified by the digital versus analogue nature of the digital euro and cash.

**Questions for the Member States:**

*Q4. Do Member States wish to align other parts of Articles 9 and 12 LTCR and Article 6 DER mentioned in the Annex?*

**3) Title and definition of legal tender (Article 4(3) LTCR and Article 7 DER)**

**Article 4(3) LTCR:** *In accordance with the acceptance at full face value of cash, the monetary value of euro banknotes and/or coins tendered in settlement of a debt shall be equal to the amount in euro indicated on the banknotes and/or coins. Surcharges on the settlement of debt with euro banknotes and coins shall be prohibited.*

**Article 7(4) DER:** *4. In accordance with the acceptance at full face value of the digital euro, the monetary value of digital euro tendered in payment of a debt shall be equal to the value of the monetary debt. Surcharges on the payment of debt with the digital euro shall be prohibited.*

There is also a difference between the terms 'settlement' in Article 4(3) of the LTCR and 'payment' in Article 7(4) DER that may not be justified. These terms should be aligned. Commission Recommendation of 22 March 2010 on the scope and effects of legal tender of euro banknotes and coins<sup>3</sup> states that 'No surcharges should be imposed on *payments* with euro banknotes and coins.' Indeed, the surcharge does not relate to the settlement, but to the payment made. Therefore, the word 'settlement' in Article 4(3) of the LTCR should be replaced with 'payment'.

Beyond this, the titles of the corresponding articles that include the definitions of legal tender of cash and of the digital euro are not aligned (Article 4 LTCR 'Legal tender' vs Article 7 DER 'Legal tender status'). The Presidency proposes to align the titles of the articles using 'Legal tender'.

#### **Questions for the Member States:**

*Q5. Do Member States agree to align the titles of both Regulations and to replace the word "settlement" in Article 4(3) of the LTCR with "payment"?*

#### **4) Exceptions to the principle of mandatory acceptance (Article 5(1)(b) and (c) LTCR and Article 9(d) and (c) DER)**

**Article 5(1)(b) LTCR:** *where, prior to the payment, the payer and payee have agreed **in accordance with applicable national law** on a different means of payment; (insertion by ES Pcy in red)*

**Article 9(d) DER:** *where, prior to the payment, the payee has agreed with the payer on a different means of payment, subject to Article 10;*

The addition of the phrase "in accordance with applicable national law" was proposed by the ES Presidency in an attempt to find a compromise on the issue of unilateral exclusions of cash.

Under the new approach of the Polish Presidency, which is to have a new standalone article on the prohibition of ex-ante unilateral exclusion of payments in cash, which would further align the LTCR and DER, it is worth considering whether the addition of the phrase "in accordance with applicable national law" is still necessary.

It should also be noted that this wording has not been proposed, nor seems to be appropriate for the DER.

<sup>3</sup> Commission Recommendation 2010/191/EU of 22 March 2010 on the scope and effects of legal tender of euro banknotes and coins.

### Questions to the Member States:

Q6. Are Member States in favour of retaining the wording “in accordance with applicable national law” in Article 5(1)(b) LTCR, or is this unnecessary, given the new approach proposed by the Polish Presidency with a new standalone article on ex ante unilateral exclusions of cash and should therefore be removed in Article 5(1)(b)?

**Article 5(1)(c) LTCR:** *where the payee is a natural person acting in the course of a purely personal or household activity; (insertion by ES Pcy in red)*

**Article 9(c) DER:** *where the payee is a natural person acting in the course of a purely personal or household activity;*

In order to achieve alignment between the exceptions listed in Article 5 LTCR and Article 9 DER, respectively, the Spanish Presidency suggested mirroring article 9(c) DER in the LTCR. However, it can be argued that the proportionality-related reasons for not requiring natural persons to accept the digital euro do not apply to cash, which has long been the natural default means of payment between natural persons, and this exception is, therefore, not warranted in the LTCR.

### Questions for the Member States:

Q7. Do Member States agree that the exception of “payees that are natural persons acting in the course of a purely personal or household activity” as listed in Article 9(c) DER does not need to be mirrored in the LTCR and that it should therefore be deleted from the LTCR?

### 5) Prohibition of unilateral exclusion (new standalone article proposed by the Polish Presidency on ex ante unilateral exclusions of cash in LTCR, Article 10 DER)

~~**Article 3(4) LTCR:** ‘ex ante unilateral exclusions of cash’ means a situation when a retailer or service provider unilaterally, and without the consent of the payer, to be determined in accordance with applicable national law, excludes cash as a payment method in a retail transaction.~~

~~**Article 4(2) LTCR:** Ex ante unilateral exclusions of cash shall be prohibited. (deletion proposed by the PL Presidency in red)~~

#### Article 4a (NEW)

#### *Prohibition of ex ante unilateral exclusions of payments in cash*

- 1. In order to ensure the mandatory acceptance of cash for the purpose of Article 4(2) and without prejudice to the exceptions provided in**

**Article 5, ex ante unilateral exclusions of cash shall be prohibited in transactions where retailers or service providers offer goods and services on public premises and the payer is physically present.**

- 2. For the purpose of this article, ex ante unilateral exclusions of cash shall mean a practice or situation where a retailer or service provider unilaterally, and without the express agreement of the payer, excludes cash as a payment method as a condition to sell. In particular, a sign informing customers that a retailer or service provider refuses to accept cash as a payment method shall constitute an ex ante unilateral exclusion of cash.**

**Article 10 DER:** *Payees subject to the obligation to accept the digital euro shall not use contractual terms that have not been individually negotiated or commercial practices which have the object or the effect to exclude the use of the digital euro by the payers of monetary debts denominated in euro. Such contractual terms or commercial practices shall not be binding on the payer. A contractual term shall be regarded as not individually negotiated where it has been drafted in advance and where the payer has therefore not been able to influence the substance of the term, particularly in the context of a pre-formulated standard contract.*

The Polish Presidency has proposed a new standalone article in the LTCR that brings together in one article all the provisions relating to the prohibition of ex ante unilateral exclusions of cash already envisaged in the Hungarian Presidency text and welcomed by most Member States. This will ensure greater clarity and visibility of this provision, thereby facilitating discussions, and also has the advantage of bringing greater alignment with the DER provision prohibiting ex ante exclusions. However, given the specific nature of cash, the Presidency proposes a wording that is particular to cash in order to take account of the positions expressed by Member States. To be precise, this new article provides for a full prohibition of ex ante unilateral exclusions of cash with a narrow scope. In other words, the prohibition should be applicable at the point of sale only to B2C transactions where retailers or service providers offer goods or services on public premises. This new provision will also include a definition of such practices and a 'without prejudice' clause to the effect that these provisions do not apply in cases where, prior to payment, the payee has agreed with the payer to use a different means of payment. Moreover, the Polish Presidency has also updated the accompanying recitals of this new article in order to make it clearer that the prohibition of the ex ante unilateral exclusions of cash is not intended to apply to Business-to-Business transactions and that recurring payments are not usually well suited to cash.

The new approach proposed by the Polish Presidency aligns the two Regulations to a certain extent, as both contain a standalone article prohibiting unilateral exclusions of the digital euro and cash respectively. During the January discussions in the Digital Euro Council Working Party, two Member States also proposed to exclude Business-to-Business payments from the scope of Article 10 DER, hence limiting it to situations where businesses interact with consumers or where public entities act as payees. Taking into account the new drafting suggestions by the Polish Presidency (see legal tender note for the CWP of 31 January 2025), it seems that there is no need to fully

align the two regulations, given the inherent differences between the two forms of legal tender. The fact that cash is already in use and that there are established (national) payment habits and traditions with respect to cash, as well as the need to find a balanced compromise on this issue in the LTCR, would require a different approach to that taken for the digital euro as a newly introduced and digital form of legal tender.

#### **Questions for the Member States:**

*Q8. Do Member States agree that, in light of the new proposal by the Polish Presidency, there is no need to further align the provisions on the prohibition of unilateral exclusion in the LTCR and the DER, given the inherent differences between the two forms of public money?*

*Q9. Do Member States wish to keep Article 10 DER unchanged, or do they support excluding B2B payments from the scope of Article 10?*

#### **6) Additional exceptions of a monetary law nature (old Article 6 LTCR and Article 11 DER)**

~~(old) **Article 6 LTCR:** The Commission is empowered to adopt delegated acts in accordance with Article 10 to supplement this Regulation by identifying additional exceptions of a monetary law nature to the principle of mandatory acceptance. Those exceptions shall be justified by an objective of public interest and proportionate to that aim, shall not undermine the effectiveness of the legal tender status of euro cash, and shall only be permitted provided that other means for the payment of monetary debts are available. When preparing those delegated acts, the Commission shall consult the European Central Bank. (deletion proposed by the ES Presidency in red)~~

**Article 11 DER:** *The Commission is empowered to adopt delegated acts in accordance with Article 38 to supplement this Regulation by identifying additional exceptions of a monetary law nature to the principle of mandatory acceptance. Those exceptions shall be justified by an objective of public interest and proportionate to that aim, shall not undermine the effectiveness of the legal tender status of the digital euro, and shall only be permitted provided that other means for the payment of monetary debts are available. When preparing those delegated acts, the Commission shall consult the European Central Bank.*

The article providing for the possibility that the Commission may adopt delegated acts to identify additional exceptions of a monetary law nature to the principle of mandatory acceptance has been deleted in the LTCR (old Article 6) following a proposal made under the Spanish Presidency.

During Council Working Party discussions, most Member States raised significant concerns regarding the practical aspects of this provision in the LTCR. Hence, as a

way to move forward and to achieve a compromise, the Spanish Presidency proposed to remove this provision in the LTCR.

However, it seems that Article 11 DER should be maintained in order to ensure flexibility and adaptability to unforeseen circumstances that may arise due to the novel nature of the digital euro and the rapidly evolving nature of the digital payments landscape.

**Questions for the Member States:**

*Q10. Do Member States believe that the “additional exceptions” provisions in the LTCR and the DER need to be aligned or do Member States believe that the differences between the two regulations are warranted and that Article 11 DER should be maintained?*

### 3. Other points only related to the digital euro

#### 1) Article 8 DER : Territorial scope

New provision under PL Pcy

**Article 8:** ~~Territorial~~**s**Scope 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.

**3. In cases where the legal tender status of both online and offline digital euro payment transactions applies, the payer shall be entitled at all times to choose between an online or an offline digital euro payment transaction.**

One Member State has suggested deleting Article 8 or including a provision on the territorial scope to mirror Article 128 TFEU and Article 11 Regulation (EU) No 974/98 [i.e. “The digital euro shall be the only digital form of money to have the status of legal tender within the Union”]. The same Member State questions the fact that the place where the payee resides or is established is the connecting factor for determining when the digital euro has the status of legal tender in online payments. A concern expressed by this Member State is that, if a payer initiates a digital euro payment without being aware of the payee's geographical location, there may be uncertainty as to whether the digital euro is deemed to have legal tender status in respect of that particular online transaction.

On the other hand, Article 8 DER seems to be necessary in view of the special characteristics of the digital euro and the existence of its two main modalities of use: online and offline. Article 8 is a public law provision, more particularly a monetary law provision. It is within the power of the legislature under Article 133 TFEU to regulate the territorial scope of legal tender and, if needed, it can be clarified in the regulation. Article 8(1) establishes that for offline payments, the logical territorial scope is the euro area. In contrast to the wording suggested at the January Council Working Party, it is now suggested to remove the addition “with the exception of payments performed at a distance”, as this is an intrinsic characteristic of offline payments, whereas including the “distance” criterion in the provision may lead to interpretation issues. Article 8(2) DER establishes that the place of the payee is the connecting factor for determining when the digital euro has the status of legal tender in online payments. This choice is justified by the fact that the mandatory acceptance obligation deriving from the legal tender status lies with the payee and that parties in online transactions are not necessarily located in the same area. The Presidency therefore suggests retaining the place of the payee to determine the application of the legal tender status of the digital euro for online transactions.

#### **Questions for the Member States:**

*Q11. Do Member States agree with the fact that Article 8 is necessary in view of the special characteristics of the digital euro and the existence of its online and offline use, or do they think that Article 128 TFEU could be replicated in the DER?*

The Presidency also notes that 11 Member States were in favour of the amendments to Article 8 proposed during the Council Working Party of 31 January 2025, while 8 Member States were against these drafting suggestions. In order to close the discussions on this provision, the Presidency kindly asks Member States to present their final positions on the need to amend the provision as indicated in the box at the top of this section.

### **Questions for the Member States:**

*Q12. Do Member States wish to amend Article 8 as suggested during the Council Working Party of 31 January 2025, with the adjustment of deleting the reference to “at a distance” in paragraph 1?*

## **2) Non-POI payments**

In previous CWP discussions and on the basis of written comments, Member States appeared to be split on the question of whether enterprises that only accept non-POI digital payments should be exempted from mandatory acceptance of the digital euro.

To recall, this proposal was primarily motivated by the concern that it would be unnecessarily burdensome for enterprises that only offer SEPA direct debit or credit transfers to their clients to contract acquiring services/related POS or an e-payments gateway in order to be able to accept payments at the POI and to fulfil their obligation to accept payments in digital euro.

In addition to the question on exempting non-POI payments from mandatory acceptance, two Member States proposed exempting enterprises, regardless of their size, that only accept payments in cash from mandatory acceptance. As per Article 9(a) of the draft Regulation, microenterprises that do not accept comparable digital means of payment may refuse to accept digital euro.

Some Member States argued in favour of such an expanded exception, mentioning the reasons described above, and suggesting the below text amendment.

Proposed wording:

### **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 Article 2, point (18), of Regulation (EU) 2021/695 of the European Parliament and of the Council, unless it only accepts credit transfers, direct debits and/or cash in the course of its business interactions;~~*

Other Member States questioned the legal feasibility of the above proposal and argued against it, preferring not to further narrow the scope of legal tender. However, as argued during the January CWP meeting, the proposed exception was problematic on two grounds. First, it was not duly justified and proportionate and was not based on grounds similar to those for the exemption for small merchants not accepting digital payments. Second, it would be dependent on free commercial decisions and would make it possible to circumvent the obligation to accept payments in digital euro by ceasing the acceptance of digital private payments at the point of interaction altogether. However, one Member State noted that it is unlikely that payees currently accepting digital POI payments would change to only offering non-POI payments simply to evade the obligation to accept digital euro.

Some Member States suggested that the policy concern about the proposed exception regarding impacts on SEPA infrastructure could also be addressed via capping merchant service charges for non-POI digital euro payment transactions based on corresponding fees for SEPA payments.

There was agreement between Member States that the scope of the merchant service charges caps should be aligned with the scope of merchants falling under the mandatory acceptance obligation. This implies the need to either review the exceptions to the mandatory acceptance obligation or to broaden the scope of the compensation model in Article 17 to cover non-POI payments .

### **Questions for the Member States:**

*Q13. Would Member States agree to excluding from the mandatory acceptance obligation businesses that only accept SEPA credit transfers, SEPA direct debits and/or cash, irrespective of their size, as per the drafting suggestion above?*

OR

*Would Member States agree to maintaining the Commission proposal on exceptions to mandatory acceptance, and consider an amendment to Article 17, whereby digital euro non-POI payments subject to mandatory acceptance cannot be charged more than incoming SEPA instant credit transfers?*

### **3) Point of interaction**

Furthermore, following the outcome of the discussions at the CWP meeting in January, the Presidency would also like to suggest the following additional proposal for a new paragraph in Article 22 to clarify acceptance at POI in different environments, as well as to provide a possible definition of POI in Article 2.

**Proposed wording for a new paragraph in Article 22 DER**

*6. Payees that only operate in a physical environment and accept digital payments at a physical point of interaction shall accept digital euro payments in the same manner. Payees that only operate in a virtual environment and accept digital payments at a point of interaction in that environment shall accept the digital euro in the same manner. Payees that operate in both environments shall accept digital euro payments in both manners, depending on the relevant environment.*

**Proposed wording for a new definition in Article 2 DER**

*xx) 'point of interaction' means the payee's physical or virtual environment where a payment transaction is initiated;*

**Drafting proposal for an addition to recital 59 DER**

*59) To facilitate a harmonised user experience, the digital euro rules, standards and processes that the European Central Bank may adopt pursuant to its own competences, should ensure that any digital euro user is able to carry out digital euro payment transactions with any other digital euro users across the euro area regardless of the payment service providers involved and the front-end services used. To reduce the fragmentation of the European retail payments market, and to support competition, efficiency and innovation in that market, and the development of payment instruments across the Union in keeping with the objective of the Commission's retail payment strategy, the digital euro should be, to the extent possible, compatible with private digital payment solutions, building on functional and technical synergies. In particular, the European Central Bank should seek to ensure that the digital euro is compatible with private digital payment solutions at the point of interaction, **which includes Point-of-Sale, e-commerce, m-commerce, as well as payees' environments that may cater for developments of future retail payments**, and in person-to-person payments, where the fragmentation of the Union retail payments market is currently significant. The use of open standards, common rules and processes, and possibly shared infrastructures could support such compatibility. While existing solutions may be leveraged where such solutions are deemed appropriate to ensure that compatibility, notably in view of minimising overall adaptation costs, such existing solutions should not create undue dependencies that could prevent adaptation of the digital euro to new technologies or would be incompatible with the digital euro features. In order to achieve these objectives, and without conferring any enforceable rights upon market operators, the European Central Bank should seek to ensure that the digital euro is compatible with private digital payment solutions on a best-effort basis and where deemed appropriate.*

**Questions for Member States:**

Q14. Do Member States agree with the proposed amendments to Articles 2 and 22 DER and recital 59?

**4) Form factors: Coordination in the legislative text between the distribution and the acquiring sides to ensure that payers can always pay with digital euro to all payees**

In the discussion on legal tender that was held during the 15th CWP meeting on 27 January 2025, several Member States indicated that clarifications were needed as

to what mandatory acceptance implies with respect to different form factors. In that respect, it would need to be guaranteed that the legal text remains technologically neutral, while providing sufficient legal clarity and ensuring that merchants and PSPs will not be overburdened with excessive or unnecessary implementation requirements and costs to facilitate the acceptance of digital euro transactions.

### Article 7(3)

*3. In accordance with the mandatory acceptance of the digital euro, the payee shall not refuse digital euro tendered in payment to comply with that obligation.*

The Commission proposal does not specify which communication technologies<sup>4</sup> merchants need to accept - the digital euro is *ipso iure* legal tender, irrespective of the payment instrument used in practice. On the distribution side, by virtue of Article 14(1) of the draft regulation, credit institutions that provide payment services as referred to in points (1), (2) or (3) of Annex I to Directive (EU) 2015/2366, would need to distribute to natural persons at least one payment instrument that can be used in online and offline payments for all the use-cases listed in Annex II (e). The proposal, however, is neutral as to which payments instruments<sup>5</sup> PSPs must make available.

A possible consequence of Article 7(3), depending on how it is interpreted, could be that payees subject to the mandatory acceptance obligation would not be in a position to refuse payments in digital euro with any kind of payment instrument/communication technology that the payer might have.

In order to avoid a disproportionate burden on payees, while ensuring universal access to the digital euro and the effectiveness of its legal tender status, the distribution obligation should be reconciled with and ensure compliance with the acceptance obligation on payees. A set of required communication technologies and payment instrument(s) for both the distribution and acceptance obligations could achieve this.<sup>6</sup> This rule could be included in the Regulation, whereas the ECB Governing Council, in the context of the Scheme Rulebook, would be responsible for consulting with merchants, PSPs, and consumer representatives and for identifying the consensus that emerges on the required communication technologies and payment instruments to pay with digital euro, as well as how this consensus would evolve over time. Identifying the *required* communication technologies and payment instruments would not prevent PSPs from distributing and payees from accepting digital euro via additional communication technologies/payment instruments. They would thus not stand in the way of innovation or the provision of value-added services. This approach thus ensures flexibility and adaptability over time, while maintaining technological

<sup>4</sup> Technology used for the transmission of data between the payer device used to initiate the payment at the POI and the merchant device used for payment acceptance (e.g. Near Field Technology (NFC) or QR code)

<sup>5</sup> e.g. payment card or payment app

<sup>6</sup> Without coordination between the distribution and acceptance side, a situation could arise in which different PSPs opt for providing payment instruments for online and offline transactions that use different communication technologies, creating gaps and mismatches, or forcing payees under an acceptance obligation to be equipped to accept all the different payment means.

neutrality and keeping the Regulation ‘future proof’ against market and technological developments. A proposal for such a provision is included at the end of this subsection.

Considering currently available and widely used state-of-the-art technologies in retail payments, the ECB has clarified the following possible combinations between communication technologies and payment instruments based on the options considered in the digital euro rulebook so far:

Use-case	Payment instrument	Communication technology
POS	Payment app	NFC (online and offline)
		QR code (online)
	Card	NFC (online and offline)
		Chip contact (online and offline)
E-Commerce	Payment app	Internet (online)
		QR code (online)
Peer-to-peer	Payment app	NFC (online and offline)
		Internet (online)
		QR code (online)

To achieve the objectives outlined above — namely, (i) preventing an excessive burden on merchants and PSPs, (ii) ensuring that payers can always pay, online and offline, with a payment instrument/related communication technology that every merchant can accept, and (iii) allowing for adaptation to technological advancements — it is proposed that the ECB selects, in consultation with market participants and users’ representatives, one or more state-of-the-art communication technologies and payment instruments for each use-case. These technologies/payment instruments would be mandatory for distributing PSPs to provide to their digital euro clients and for merchants to accept. Building on a suggestion made by some Member States in the Council Working Party to mirror the distribution obligation to natural persons by a distribution obligation for acquirer PSPs to their clients<sup>7</sup>, which received broad support among Member States, PSPs providing acquiring services would be obliged to enable their clients to accept digital euro payments via the same communication technologies. The ECB Governing Council, as manager of the digital euro scheme, would update the list of required and optional communication technologies and payment instruments, in line with technological and market developments, to ensure that they remain state of the art.

Adjustments to the regulation would be necessary to clarify the respective distribution and acceptance obligations and to reflect the fact that the ECB Governing Council, as manager of the digital euro scheme, will be in charge of determining the specific communication technologies and payment instruments that would fulfil these

<sup>7</sup> A proposal for such a provision will be made for a subsequent Council Working Party.

obligations and update them in line with technological developments, with the appropriate safeguards.

#### **Proposed wording for a new recital 54bis**

*An effective legal tender status for the digital euro requires every digital euro user to have the technical means to make both online and offline digital euro payment transactions to every payee that accepts or that has an obligation to accept digital euro. However, multiple options regarding digital euro payment instruments and associated communication technologies may be possible and these could evolve in the future. Without coordination between the distribution obligation imposed on Payment Service Providers and the acceptance obligation imposed on some payees, the general mandatory acceptance of digital euro would in principle require payees to accept digital euro via all available communication technologies. Otherwise, this situation could create gaps and mismatches. Therefore, to avoid creating an excessive burden on payees, while ensuring effective legal tender status for the digital euro, a set of required payment instruments and communication technologies should be defined, which payment service providers should provide to all digital euro users and through which all payees that accept or that have an obligation to accept digital euro are able to receive digital euro payments. Within that framework, the European Central Bank is to define that instrument or instruments and the associated communication technologies as part of the detailed measures, rules and standards adopted by the European Central Bank concerning the digital euro. To define these required payment instruments and communication technologies, the ECB should consult with merchants, PSPs and consumer representatives. The European Central Bank should ensure that the minimum set of required payment instruments and associated communication technologies takes into account the wide usability of the digital euro for payers and the burden on payees, and reflects technological change and people's changing payment habits, updating this minimum set accordingly over time.*

#### **Proposed wording for new paragraphs 7, 8 and 9 in Article 22**

*7. Payment service providers shall make available to all digital euro users mandatory payment instruments that allow them to make both online and offline digital euro payment transactions.*

*8. Payment Service Providers that provide digital euro acceptance services shall enable their clients to accept digital euro payments via mandatory communication technologies. Payees subject to an acceptance obligation pursuant to Article 7 shall not refuse digital euro payment transactions initiated via such communication technologies.*

*9. The mandatory payment instruments and communication technologies referred to in paragraphs 7 and 8 shall be those that the European Central Bank prescribes as part of the detailed measures, rules and standards pursuant to Article 5(2). This is*

*without prejudice to additional payment instruments and communication technologies that the ECB may make available pursuant to Article 5(2).*

The proposed new paragraphs (7) and (8) of Article 22 would warrant further changes in the Regulation, not all of which are reflected in this discussion note. For instance, letter (g) of Annex II may no longer be needed for the purposes of specifying distribution obligations on natural persons<sup>8</sup>. In addition, a definition of the terms “digital euro acceptance services” and “communication technology” may be necessary. A proposal for the latter can be found below.

**Proposal for a new definition of “communication technology” in Article 2:**

*yy) ‘communication technology’ means technology used for the transmission of data between the payer device and the POI to initiate a payment transaction;*

**Questions for the Member States:**

*Q15. Do Member States agree to clarify the obligations of merchants and PSPs as regards the payment instruments and associated communication technologies for each use-case? If so, do Member States support the proposed drafting?*

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<sup>8</sup> However, since Annex II currently also serves the purpose of establishing services that should be provided to natural persons free of charge, deleting Annex II (e) would presuppose having separate Annexes for the distribution obligation as regards basic services and the “free of charge” basic services. This matter is not discussed in this note.