

Position Paper

2023 August

On the Proposal for a Regulation on the establishment of the digital euro

Summary

Bitkom welcomes the European Commission's legislative proposal to establish the digital euro, recognizing its potential to address the profound impact of digitalization and new technologies on European citizens' lives and the economy. This proposal marks a crucial step in embracing the digital age.

Considering the increasing prevalence of private digital payments, the emergence of foreign Central Bank Digital Currencies (CBDCs), private stablecoins, and the gradual decline of traditional banknotes and coins, the introduction of a European retail CBDC becomes vital. Such a digital euro could effectively tackle these challenges by providing an official and digitally accessible form of central bank money while complementing cash.

We acknowledge the proposal's efforts in upholding financial stability and monetary sovereignty, as well as its potential to foster a competitive, efficient, and innovative European retail payments market and digital financial sector.

However, we would like to draw attention to some key recommendations that must be addressed before finalizing any decision on the digital euro. These recommendations include:

- Clarifying the legal tender status, esp. with regards to potential exemptions in relation to physical cash
- Specifying the roles of Central Banks and intermediaries and their relationship to one another
- Resolving technical shortcomings and ambiguities

Considering these essential recommendations, Bitkom supports the EU's plans and anticipates collaborating with policymakers and stakeholders to ensure the successful implementation and widespread adoption of the digital euro.

In the following pages, we elaborate on specific Articles that require clarification and adaptation to contribute to the development of a comprehensive and robust digital euro framework.

Detailed Response

Chapter I - Subject Matter and Definitions

Definitions (Art. 2): Section 25 of Article 2 provides a definition for "comparable digital means of payment," encompassing payment methods like debit card and instant point-of-interaction payments while excluding credit transfers and direct debits not initiated at the point of interaction. However, this definition lacks specificity and should be expanded to encompass additional forms of payment, such as Peer-to-Peer (P2P) payment apps and digital cryptocurrencies. A more comprehensive scope will enhance clarity and ensure a thorough understanding of the covered payment mechanisms.

Chapter II - Establishment and Issuance of the digital euro

Applicable law (Art. 5): The European Central Bank (ECB) is empowered with a mandate to establish measures, standards, and rules for the digital euro infrastructure. While compatibility with private sector payment schemes is encouraged, it remains voluntary ("best effort" basis). The ECB's full control in combination with acceptance and distribution obligations for payment service providers could be detrimental to the European financial ecosystem. While the goal is to shape an inclusive, efficient, and secure digital payment ecosystem for European citizens, the combination of powers mandated to the ECB could potentially lead to a public retail payment monopoly. Following the current voluntary approach, short term payments sovereignty can be achieved but likewise private payment initiatives may be negatively impacted and the payment innovation gap – from a global perspective – may be widened. Thus, mechanisms for industry alignment must be found.

Chapter III – Legal Tender status

Exceptions to the obligation to accept the digital euro (Art. 9): The criteria presented in Article 9 seem to lack clarity and a well-defined rationale. Questions arise concerning the basis for setting the employee threshold at 10 persons and the minimum annual turnover requirement of EUR 2 million. Additionally, there is uncertainty surrounding the responsible entity for monitoring these exceptions. Further elaboration and guidance are necessary to ensure transparency and consistency in the application of these exceptions. Overall, exceptions re. acceptance obligations shall be proportionate and not stronger as comparable obligations concerning physical cash. Private forms of payment shall not be

disadvantaged. In fact, fostering competition is key to drive innovation and reach EU-wide acceptance of digital payments.

Prohibition of the unilateral exclusion of payments in the digital Euro (Art. 10): The current wording would render it impossible to exercise freedom of contact to use payment methods other than the digital euro. We would suggest including a referral to European antitrust enforcement measures or to other forms of oversight or to delete Article 10 overall.

Chapter IV – DISTRIBUTION

Payment service providers (Art. 13.): The proposed distribution of the digital euro introduces critical points that warrant careful consideration. The mandate for payment service providers to offer funding and defunding services to all digital euro users, irrespective of whether they are existing customers or not, is aimed at enhancing accessibility. However, it raises concerns over additional Know Your Customer (KYC) risks and complex processes that have to be built for a very niche use-case: Setting up a “multi-(de)-funding” mechanism would only be needed if a European customer has checking accounts with two banks and wants to use wallet of Bank A and checking account of Bank B. Moreover, potential liquidity risk during the digital euro funding process (when client has checking account with another bank) arise since PSPs providing the digital euro must provide liquidity until the reimbursement by a client’s bank. In other words, the provisions for funding and defunding services need to have regard for user experience and functionality. Unwanted effects may include unclear fund flows which will increase complexity in financial reporting, accounting, and reconciliation. In addition, holding limits should take account of the different user needs, including merchants, and be set to be appropriate for different use cases for the Digital Euro.

Whilst we agree with a multi wallet approach and interoperability for enhanced user experience we suggest revisiting Article 13.7. as this increases complexity and the need for an instant coordination and reconciliation between the different wallet providers and the need for a central party (compare to our points below on Art. 16).

Chapter V – USE OF THE DIGITAL EURO AS A STORE OF VALUE AND AS A MEANS OF PAYMENT

Principles (Art. 15): The legislative proposal suggests initial maximum charges for merchants during the digital euro launch, with continuous fee monitoring. Not knowing either the exact design of the digital euro or the interplay between ECB and intermediaries, any discussions concerning compensation are premature. Given the fact that PSPs are legally bound to offer the digital euro to corporates and end-users any intervention may unintentionally destabilize the payments infrastructure. In that regard, Bitkom suggests clarifying that one-off and recurring investments made by PSPs can and will be covered by any type of fee structure. Otherwise, offered digital euro services may suffer in quality, leading to lesser acceptance. This would be against the very idea of strengthening the European payments ecosystem.

Limits to the use of the digital euro as a store of value (Art. 16): Setting holding limits for each digital euro user requires the information on the number of accounts an individual user is holding (on- and offline) as well as information on whether a user is sharing one account with multiple users (also see remarks re. Art. 22.5.) to come up with a cumulative amount. This requires a control mechanism based on a lot of personal data and gathered in one single point, which is supposed to be the ECB (Art. 35-8). It is questionable if this kind of control complies with the privacy-preserving measures and could even raise the question if anonymity is possible.

Chapter VII – Technical Features

Accessibility and use (Art. 22): The apparent contradiction between Art. 22.2. and Art. 13.4. necessitates clarification. While Art. 22.2. states that digital euro users are not obliged to possess or open non-digital euro payment accounts, Art. 13.4. requires each user to designate a non-digital euro payment account for their digital euro account. This inconsistency should be addressed to ensure coherence in the regulatory framework and to ensure that banks are not obliged to provide non-clients with free digital euro services.

Moreover, Art. 22.1. demands further elaboration, specifically regarding the phrase "have usage and service features that are simple and easy to handle." Clarity is needed on whether this includes non-digital forms of the digital euro, such as banking cards.

Article 22.5. requires providers to allow access and use of digital euro payment account by more than one digital euro user. In general, this is very complex to set up and it remains questionable whether this holds any added value for a larger group of digital euro users. In the context of a parent child relationship, the possibility of granting access to the digital euro account to a designated person with prior authorization may be reasonable. Thus, we suggest clarifying what is meant by "more than one digital euro user" with respective restrictions.

Offline and online digital euro payment transactions (Art. 23): Several key aspects require clarification in the context of merchants and digital euro usage. Firstly, it is essential to determine whether merchants can hold digital euro beyond any potential limits imposed. Additionally, understanding how funding and defunding processes will integrate with offline functionality is crucial for a seamless payment experience.

A significant concern is how to prevent offline payments from exceeding the holding limit. Will such checks occur only when the system goes back online? Addressing this issue will be critical in ensuring compliance with holding restrictions and avoiding any unintended overspending.

Conditional payments (Art. 24): The proposal lacks detailed conditions and information on programmable money prohibition. These need to be elaborated. It is also to be noted that the role of ECB is to provide basic infrastructure for the transfer and blocking of the digital euro and standards, measures, rules, and services should be defined and offered by the private sector.

European Digital Identity Wallets (Art. 25): Whilst we generally support the proposed measures, we want to stress that there is no existing connection between payment wallets and identity wallets. Therefore, focusing not only on interoperable frontend services but also on setting up respective backend solutions need to be prioritized to increase efficiency for all users.

Regarding the setup, operational complexities, since the frontend must be interoperable with 27 different national digital ID wallets, fraud, and reputational risks, as well as disintermediation concerns arise that need to be addressed.

Interoperability (Art. 26): The interoperability between standards governing the digital euro and private means of payments is welcomed. However, this obligation should more clearly point towards the reusability/leveraging of existing standards governing private means of payment for the digital euro, i.e.: private systems to leverage digital euro scheme rules while the digital euro is to leverage existing rules. This would make the digital euro deployment and provision more cost efficient.

Front-end services to access and use the digital euro (Art. 28): Stand-alone ECB front-end services should not be mandatory which requires a clarification of the wording: PSP should be obliged to develop its own front-end **OR** use the ECB app (not **AND**) In Art. 28.3, the wording “digital euro payment accounts can be quickly (sic!) and easily (sic!) accessed to and used by digital euro users” may lead to multiple interpretations, and it may be difficult to translate as an objective requirement.

Compliance with union sanctions adopted in accordance with Article 215 TFEU (Art. 29): Maintaining transaction screening would result in a high level of rejected transactions most of which would be false positives - same challenges as for instant payments: in the absence of harmonized EU and global lists, many banks will still need to do transaction-level screening for Member State/third country lists. Discussions in the context of the Instant Payments Regulation to shift from transaction screening to recipient screening shall be taken into account in the context of the digital euro as well.

Settlement of digital euro payment transactions (Art.30): It remains unclear if the offline and online digital euro account will or will not be connected. The word “updated” could have different meanings. However, if offline accounts ever established internet connectivity, accounts will be susceptible to privacy and security risks.

Switching of digital euro payment accounts (Art. 31): Mandating intermediaries to enable the switching could result in a significant burden for the PSPs. Moreover, account identifier portability has no precedent and will add a lot of complexity and cost. The “exceptional circumstances” should, therefore, be more clarified to avoid interpretations and to translate it in objective requirements.

Chapter X – Final provisions

Delegated Acts (Art. 38): The implementation of the delegated act demands a clear timeline, akin to the successful application of the Payment Services Directive 2 (PSD2). To facilitate this, the legislative proposal should encompass well-defined check marks, outlining the responsibilities of the industry, the ECB, and the legislative body. These clear and time-bound objectives will serve as essential benchmarks to ensure effective and transparent progress towards the creation of a digital euro.

Bitkom represents more than 2,200 companies from the digital economy. They generate an annual turnover of 200 billion euros in Germany and employ more than 2 million people. Among the members are 1,000 small and medium-sized businesses, over 500 start-ups and almost all global players. These companies provide services in software, IT, telecommunications or the internet, produce hardware and consumer electronics, work in digital media, create content, operate platforms or are in other ways affiliated with the digital economy. 82 percent of the members' headquarters are in Germany, 8 percent in the rest of the EU and 7 percent in the US. 3 percent are from other regions of the world. Bitkom promotes and drives the digital transformation of the German economy and advocates for citizens to participate in and benefit from digitalisation. At the heart of Bitkom's concerns are ensuring a strong European digital policy and a fully integrated digital single market, as well as making Germany a key driver of digital change in Europe and the world.

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