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REPORT

From: Presidency

To: Permanent Representatives Committee (Part 2)

Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the provision of digital euro services by payment services providers incorporated in Member States whose currency is not the euro and amending Regulation (EU) 2021/1230 of the European Parliament and the Council

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the establishment of the digital euro

- Progress report

I. GENERAL REMARKS

- This Progress Report has been prepared under the responsibility of the Belgian Presidency having regard to the opinions expressed by delegations during the Working Party meetings in the first half of 2024.** This report may not be relied upon as binding on the delegations and, instead, should be viewed as the Presidency's assessment of the outcome of the discussions held at those meetings. This report is intended to provide continuity and facilitate the task of the incoming Presidency. The Presidency invites COREPER to take note of this Report, with a view to progressing work further. The incoming Hungarian Presidency is invited to build on the progress made when taking over and continue to work on the Single Currency proposal.

- 2. On the 28th of June 2023, the European Commission put forward three legislative proposals within a ‘Single Currency Package’.** This package includes a proposal to ensure that citizens and businesses can continue to access and pay with euro banknotes and coins throughout the euro area (Regulation on the legal tender of euro banknotes and coins, hereinafter "the cash Regulation") and a proposal to establish and set the framework for a new digital form of the euro that the Eurosystem may issue in the future as a complement to euro cash (Regulation on the establishment of the digital euro, hereinafter "the digital euro Regulation" or "the draft Regulation"). To ensure consistency with Single Market rules, the Commission complemented the digital euro Regulation with a third proposal for a Regulation on the provision of digital euro services by payment service providers established in Member States whose currency is not the euro (hereinafter "the non-euro area Regulation").
- 3. The Spanish Presidency of the Council of the European Union, which started on 1 July 2023, set the basis for future discussions by covering a wide scope of topics.** The Spanish Presidency organised several Working Party meetings and came to the conclusion that, several key aspects covered by the digital euro Regulation are generally supported: (i) the legal tender status of the digital euro; (ii) its distribution through payment service providers (PSPs), with mandatory distribution by credit institutions; (iii) the need to set holding limits; and (iv) the need for a higher level of data protection compared to existing digital payment instruments. In addition, significant efforts were made to bring the provisions on the digital euro in line with those on cash, including clarifying the legal tender status and ensuring access to cash, in particular for vulnerable groups. The Spanish Presidency laid a sound basis for future work by providing the Belgian Presidency with technical drafting suggestions and pointing out the need for further in-depth discussions in the Council Working Party on the content of the digital euro Regulation.

- 4. The Belgian Presidency of the Council of the European Union organised five Council Working Party meetings to deepen the discussion on issues prioritised by the Member States.** The Presidency bilaterally invited all Member States to share their opinions on which issues should be prioritised. On the basis of this consultation, the Presidency first focused on key aspects of the draft Regulation relating to Chapter VI ("*Distribution of the digital euro outside the euro area*") and Chapter X ("*Final provisions*"), with a view to ensuring a full reading of the text of the entire regulation on the digital euro in the Council Working Party by the end of the semester. Subsequently, the Presidency focused on topics related to (i) the offline digital euro, (ii) the impact of multiple digital euro accounts, (iii) front-end solutions, (iv) emergency switching and (v) joint digital euro accounts, before discussing the compensation model for the online and offline digital euro. In addition, the Presidency continued the discussions initiated by the Spanish Presidency that required further reflection, including on the division of competences between the co-legislators and the European Central Bank ("ECB") (Chapter V - Articles 16 and 17), as well as on privacy and data protection (Chapter VIII).
- 5. In addition, the Presidency organised technical seminars bringing together experts from the European Central Bank and the European Commission to ensure a common understanding and support rigour in the policy debates.** Following requests from Member States during the bilateral meetings and the call for further technical discussions in the Spanish Presidency's progress report, the Presidency decided to organise such seminars in the following areas: (i) the offline functionality of the digital euro, (ii) the impact of multiple accounts, (iii) emergency switching, (iv) the EU digital identity wallets and (v) the front-end solutions for accessing and using the digital euro. With these seminars the requests of the Member States have been met. The Presidency greatly appreciates the efforts made by the European Central Bank and the European Commission in this respect and considers that the information provided allows Member States to advance the discussions.

- 6. This report represents the Presidency view on the progress achieved during the Belgian Presidency of the Council working party discussions on the digital euro and non-euro area Regulations.** The Presidency is grateful for the excellent and constructive exchanges that have taken place between Member States, the Commission and the European Central Bank under its term.
- 7. The Presidency will share with the incoming Hungarian Presidency the technical work that has been prepared and discussed in the Council working parties.** The Belgian delegation will further collaborate with the Hungarian Presidency in the forthcoming months.

II. THE ESTABLISHMENT OF THE DIGITAL EURO

A. OFFLINE DIGITAL EURO

- 8. The Council Working Party on 29 February 2024 addressed the provisions on offline digital euro.** To support the discussions, the Presidency provided two detailed discussion notes on the policy options and organized a technical seminar.
- 9. During the technical seminar on 9 February 2024, the ECB presented interim conclusions from their technical analysis of the offline digital euro solution.** Member States took note of the most appropriate form factors for the identified use cases; the options for distributing the offline solution to the end-users; the mechanisms for funding offline digital euro instruments; the anti-forgery checks and the usage at a point-of-sale (PoS). The ECB presented an overview of the related project delivery risk.

Availability of offline digital euro from the first day of issuance

10. Member States generally support a simultaneous launch of online and offline digital euro. A clear majority of Member States points out that an offline digital euro solution is essential to the unique value proposition and the narrative of the digital euro project. Member States notably refer to the following characteristics: the enhanced level of privacy and resilience, the promise of greater financial inclusion and the similarity with cash. Notwithstanding this majority opinion, some Member States prefer to add a best effort clause in Article 23(1), noting operational and technical challenges which may unduly delay the overall launch or the rollout of specific use cases of the digital euro in their opinion. Other Member States hold their opinions in deliberation until more details on the selected technical implementation and operationalisation of the first offline digital euro solution are available.

Fair, reasonable and non-discriminatory access to mobile devices (FRAND)

11. Member States generally support Article 33 and most Member States back a further detailing of the provisions to ensure that it enables an effective implementation of offline digital euro and FRAND access. Member States invited the ECB to clarify its requirements, in particular to ensure the right level of access to secure elements of mobile devices. Moreover, some Member States are in favour of extending the scope of the article beyond the digital euro and clarifying the roles of Trusted Service Managers (TSMs) in accessing features in mobile devices controlled by Original Equipment Manufacturers (OEMs) and Mobile Network Operators (MNOs). According to the Commission, the article should remain as technology neutral as possible to be future proof, whilst mindful of interactions with Digital Markets Act (DMA) provisions.

12. In addition, some Member States want to empower the Commission to further specify the requirements of Article 33 for instance via implementing acts. In their view, this would be useful to ensure the continued security and interoperability of the hardware and software functionalities supporting the offline digital euro.

Anti-money laundering rules

13. Member States acknowledge the need to address the risks of money laundering and terrorism financing. Multiple Member States support the current stipulation that empowers the Commission to adopt implementing acts to set holding and/or transaction limits for offline digital euro in accordance with the examination procedure referred to in Article 39. This ensures that the process remains flexible, and that Member States are consulted. Other Member States are in favour of clarifying the procedure in Article 37(5), setting limits and exploring stricter limits at national level.

14. A large majority of Member States agrees that the Eurosystem and payment service providers should not retain data on offline digital euro payment transactions. In this regard, Member States underline the importance of treating offline digital euro payments as closely as possible to cash payments. Payment service providers should not process personal data related to offline digital euro payment transactions. Member States acknowledge that the Eurosystem should be able to effectively mitigate the risk of counterfeiting. Offline digital euro payment transactions themselves should not be monitored, i.e., AML/CFT-monitoring could only occur in connection with transactions for the funding and defunding of local storage devices. Only a limited number of Member States nonetheless noted that this exemption could increase ML/TF risks.

Number of local storage devices per digital euro user

15. General support was found for enabling end-users to hold multiple local storage devices, provided that this would not allow the circumvention of offline holding and transaction limits. A number of Member States are nonetheless open to the possibility of restricting the number of local storage devices should it be required for the effective management of ML/TF risk. In the view of those Member States, such restrictions should be imposed by the Commission via an implementing act.

B. MODALITIES OF DISTRIBUTION

16. The modalities of distribution were discussed at different occasions during the Belgian Presidency, notably at the Council Working Party meetings of 26 March and 27 May 2024. In three discussion notes the Presidency examined the impact of multiple digital euro accounts per end user; the value of a harmonized user experience and how to achieve it; the impact of joint digital euro accounts; the opportunities for interoperability with and integration of EU Digital Identity Wallets (hereinafter "EUDIWs"); the policy options related to front-end solutions to access and use the digital euro solutions and, finally, the mechanisms for dispute management.

17. Moreover, the Presidency organised two seminars to discuss the technical impact as well as added value of different policy options. The topics of the seminars were identified from Member States' feedback. The ECB elaborated on the impact of multiple accounts and the linked switch-and-port functionality during the 22 March 2024 seminar, which was backed by an ECB non-paper. The 27 May 2024 seminar focused on front-end solutions, with the ECB presenting its analysis on a digital euro application developed by the Eurosystem followed by a presentation on EUDIWs by the Commission.

Multiple accounts, switching, emergency switching and joint accounts

18. Member States generally agree that end-users should be able to hold multiple digital euro accounts from the initial launch of the digital euro. Based on the technical background information provided by the ECB, Member States conclude that allowing end-users to hold multiple digital euro accounts from the outset neither significantly increases the complexity of processing of digital euro payment transactions, nor reduces the level of data protection. They conclude that allowing digital euro users to hold multiple accounts promotes competition in the market leading to greater innovation, variety and potentially lower prices. Member States take note of the ECB's comments on the added complexity of managing the holding limits in a multiple account context. They agree that Recital 39 of the draft Regulation should clarify that when a digital euro user holds more than one digital euro account, the allocation of holding limits across these accounts must not lead to exceeding the overall holding limit set in the draft Regulation.

19. A majority of Member States supports the introduction of the switch-and-port functionality under article 31, in addition to allowing multiple accounts per user. While Member States recognise that the switch-and-port facility is a useful addition to allowing digital euro users to hold multiple accounts, some consider that it may not provide the same benefits as allowing for multiple accounts, e.g., in terms of the level of competition between payment service providers.

20. Member States generally support clarifying the circumstances that may lead to an emergency switch under Article 31(2). A more detailed list or explanation of what are circumstances which could trigger emergency switching could be considered. Some Member States indicate that such list or explanation should not be a closed list to ensure the draft Regulation covers all possibly relevant circumstances. Member States clarified that the insolvency of a payment service provider should be one of the circumstances that could trigger the emergency switching procedure. Some Member States would like to see further clarifications on what is understood by a prolonged or reasonable period of time during which a payment service provider is not able to provide digital euro payment services before emergency switching is activated. The ECB indicates preference to have as little discretionary margin as possible when it authorises emergency switching. The draft Regulation could therefore lay down specific criteria for the ECB to follow, or the Commission could be empowered to further specify such criteria.

Considerations on accessing the digital euro services

21. Member States agree that the digital euro should enhance digital and financial inclusion, which requires special attention to the way in which the end user can access digital euro payment services. Multiple Member States consider a digital euro app developed by the Eurosystem and supported by all PSPs, as an effective approach to achieve digital and financial inclusion goals. In their view, a Eurosystem developed digital euro app would offer an easy, harmonised, and inclusive interface to basic services. Value-added services would only be available through the PSPs' interfaces. Furthermore, it could result in improved resilience for end-users and reduced implementation costs for PSPs. Other Member States, however, are of the opinion that a general obligation for all PSPs to offer a Eurosystem digital euro app would contradict the idea of a “public private partnership” between the Eurosystem and the private sector and could result in duplication. Some Member States support an obligation to offer a Eurosystem digital euro app only for those PSPs that do not offer their own front-end solution to customers. A majority of Member States support an ECB developed digital euro app. A few Member States question the competence of the ECB to develop adequate front-end services suitable for end-users. Requirements aimed at enhancing financial inclusion would be included in the Rulebook, which will result in additional requirements for interfaces to be developed by the PSPs. These additional requirements may constrain PSPs in developing their own unique interfaces. The Presidency notes that the difference in view is not of a technical nature.

22. In general, Member States consider that a Eurosystem digital euro app should display the brand of the PSP offering digital euro services to the end user. As the digital euro is an intermediated solution, it is important to emphasise the relationship between the payment service provider and its digital euro users. Moreover, it is a form of reciprocity as PSPs will be required to display digital euro branding in their own front-end services as stipulated in Article 28(3).

23. Member States generally support the current provisions related to the interoperability with and integration of the EUDIWs, as specified in article 25. One member state pointed out that it should be the free choice of the user to use the EUDIW in combination with the digital euro. Several Member States commented that the last sentence of Recital 58 of the draft Regulation might lead to uncertainties on whether the offline digital euros will be stored in the EUDIW or in the secure elements only.

Dispute mechanism

24. Effective dispute handling is an important factor in ensuring trust in the digital euro.

Several Member States welcome the establishment of mechanisms that support dispute resolution and suggest to further clarify the nature of the mechanisms and interaction with other legislation. Some Member States stress that the Eurosystem should only provide technical support for the resolution of disputes and that this should not modify the substantive law governing such disputes. The Commission and the ECB emphasized that the ECB and NCB's role would be of establishing these mechanisms and making them available for payment service providers to facilitate the exchange of messages for the resolution of disputes and without being a party in any of the disputes. This is without prejudice to the functions of NCBs in other legislations or alternative dispute resolution procedures.

25. Several Member States suggest that liability rules should be explicitly stated in the draft Regulation. These Member States argue that the ECB should not unilaterally define these rules as there may be conflicts of interest, e.g., in disputes between PSPs and the Eurosystem on operational availability. The Commission and the ECB point out that the ECB's extra-contractual liability is governed by Article 340 TFEU and that the ECB cannot unilaterally limit this liability. Some Member States also consider that the ECB may not validly limit its contractual liability towards payment service providers under the Rulebook, notably if payment service providers have no choice but to adhere to the Rulebook without a genuine margin to negotiate on its terms.

C. COMPENSATION MODEL AND RELATED LIST OF BASIC SERVICES

26. Technical preparatory work on the principles for a compensation model of the digital euro was the focus of the Council Working Party meeting on 29 April 2024. To prepare for discussions on this complex subject, the Presidency collected preliminary views from Member States through a questionnaire. The discussion note prepared by the Presidency for the meeting on 29 April provided an analysis of the proposed principles for a digital euro compensation model, the methodological guidelines for calculating fees, and the possible free basic services for consumers.

27. During the CWP meeting, the ECB presented an overview of the European payment landscape. The presentation provided key insights into the fees and compensation models of other payment means. During this session, the ECB also highlighted the significant disparity in charges incurred by merchants based on their size and their commensurate power to negotiate (or not) on these charges. Some Member States have highlighted the need for further clarifications by the ECB regarding key elements of the technical design of the digital euro and from the Commission, including on the estimated costs for the Eurosystem and the private sector (especially PSPs).

Principles for a fair compensation model

28. Member States generally agree with the high-level principles for a digital euro compensation model under Article 15(2), which allow for capping the merchant service charges (MSC) and inter-PSP fees. Many Member States agree on the importance of ensuring fair compensation for payment service providers while protecting merchants from excessive fees. This balancing of interests is important as merchants will be legally obliged to accept digital euros and, thus, to contract with payment service providers. Some Member States nevertheless express scepticism regarding a two-caps model. These Member States questioned the conventionality and proportionality of an intervention, notably stressing its operational feasibility and alignment with market dynamics. Some advocate for researching alternative approaches, like enhancing the obligations for fee transparency (which may drive price-based competition) or emitting recommendations on prices.

29. A majority of Member States would support a uniform and non-discriminatory application of caps across the euro area. Many Member States agree on the principle of uniformity to prevent market fragmentation and ensure fairness. Other Member State note national discrepancies and the potential impact on local payment systems, which was acknowledged by the Commission. Member States also consider that with a uniform cap in place, actual fees and charges could still be set at different levels below the cap, thus reflecting differences in the local market conditions. A transitional period for Member States to set lower national caps could accommodate for different market conditions in the short term.

30. Some Member States point out potential issues with Article 17(7) of the draft Regulation, according to which inter-PSP fees shall not apply to funding and defunding transactions. In their view, there would be a risk of creating an uneven playing field among different types of payment service providers, specifically those PSPs who offer digital euro accounts versus those PSPs who offer the linked private money accounts – for waterfall and reverse waterfall operations – to digital euro accounts held by the former. These Member States also emphasize the need for further clarifications and that specific scenarios (including whether compensation should be granted for the PSPs providing the linked private account) must be considered.

Guidelines for setting fees on digital euro payment services

31. A majority of Member States are in favour of amending the definition of comparable digital means of payment to comprise all payment instruments that may be used in a digital environment where the initiation of the payment takes place at the point of interaction and where the user's payment account is immediately debited. This corresponds to the view that the ECB expresses in its opinion on the draft Regulation. Many Member States agree with the above-mentioned definition, while generally excluding credit cards from it. However, some Member States are of the view that, for the purpose of Article 17, credit transfers and direct debits should also be considered as comparable digital means of payment.

32. Member States generally agree on the need for further clarification of the concepts of "most cost-efficient payment service provider" and "reasonable margin of profit".

They emphasize the importance of clear definitions and methodologies to ensure accuracy as a basis for a fair compensation of the payment service providers. Suggestions include creating detailed guidelines on relevant costs, considering the inclusion of various cost factors, and establishing clear criteria for determining reasonable margins of profit. Some propose that these details be worked out in secondary legislation or delegated acts to allow for flexibility and adjustments as needed. Nevertheless, some Member States expressed serious concerns about the economic impact for the payment industry of the approach proposed by the Commission and the ECB on the two above mentioned topics.

33. Several Member States express reservations about the effective application of the parameters prescribed in Article 17(5) for developing the methodology for monitoring and calculating fee caps.

Member States are concerned about the challenges associated with developing this methodology. It appears challenging to establish a comprehensive overview of the costs incurred by all payment service providers distributing digital euros across the euro area, as well as the profit margins they apply. Some Member States fear that applying these parameters over consecutive periods of time would result in only the most cost-efficient payment service providers being able to recover their actual costs, without being able to generate a profit margin, while other payment service providers would not be able to cover their costs. Finally, several Member States believe it is necessary to have a better understanding of the costs payment service providers will incur for distributing the digital euro, before deciding on the methodology and its parameters. Therefore, Article 17(5) or the relevant recitals should be revised accordingly.

34. Member States generally agree to applying the proposed principles for a compensation model to offline digital euro transactions at the PoS, while not compromising its "cash-like" privacy.

Ensuring consistency and neutrality between online and offline transactions is considered crucial to maintain a level playing field. A workable compensation model for offline digital euro transactions at the PoS is needed and requires further analysis, including analysis of its technical implementation and fee calculation.

35. Member States generally support the list of free basic digital euro services for

consumers proposed by the Spanish Presidency. A limited number of Member States question whether switching should be free for consumers when they are allowed to hold multiple digital euro accounts. Some Member States caution against a situation where it becomes economically unviable for payment service providers to provide digital euro payment services, notably if the list of free basic services is too extensive. Some Member States agree that automated funding and defunding should only be free for consumers when this takes place as a consequence of waterfall and reverse-waterfall mechanisms, thus to the exclusion of any other cases of automated funding and defunding. Some Member States specifically support the fact that payment service providers are not prevented from charging a fee for holding a digital euro account, as is the practice for regular payment accounts.

36. Many Member States express the view that PSPs should be allowed to charge

consumers for funding digital euro accounts from cash and defunding digital euro accounts into cash. These Member States argue that the current practice whereby payment service providers may charge fees for the deposit or withdrawal of cash should be observed for the digital euro as well, and that payment service providers should be allowed to directly recover their costs for the provision of cash services. It should, however, be ensured that payment service providers do not charge more for the deposit or withdrawal of cash into or from digital euro accounts than for non-digital euro payment accounts. These Member States therefore support the proposal of the Spanish Presidency to clarify in Article 17(1) that payment service providers may charge a reasonable fee that shall not exceed the lowest amount charged by them to the respective customer for funding or defunding a non-digital euro payment account from or into cash. A minority of Member States remain nonetheless of the view that funding or defunding from or into cash should always be free for consumers, considering that according to Article 12(1) the digital euro shall be convertible at par with euro banknotes and coins.

37. Member States generally support the list of free basic services with regard to offline digital euro transactions, as proposed by the Presidency. Since this list is largely aligned with the list of free basic services as discussed under the previous paragraph, it could be possible to merge the two lists into one single list under Annex II.

38. A majority of Member States supports that Union citizens residing outside the euro area should have free access to basic digital euro payment services while they exercise their rights of free movement in a euro area Member State. Thus, citizens residing outside the euro area and exercising their free movement rights as workers, self-employed persons or by providing services in a euro area Member State should have free access to basic digital euro services. However, Member States have split views on whether consumers who no longer reside in a euro area Member State but who opened a digital euro account at the time they were residing in such Member State, should continue to have free access to basic digital euro payment services.

D. PRIVACY

39. During the Council Working Party of 30 May 2024, Member States discussed the provisions of Chapter VIII of the draft Regulation on privacy and data protection. Ensuring state-of-the-art privacy is a primary concern of the Member States, and a shared policy objective for the Member States, the Commission and the ECB. The Presidency's discussion note assessed the implications of the suggested processing of personal data by the different actors in the payment chain. Member States generally stress that processing of personal data should be minimised as much as possible, and that it should be carefully assessed which type of data should be processed in the light of the final design of the digital euro.

- 40. Member States generally agree that the list of purposes for which payment service providers may process personal data may need to be complemented.** It should be clear, for example, that payment service providers are allowed to process personal data for exchanging messages for the resolution of disputes and switching, as well as for the provision of information to and consultation of the fraud detection and prevention mechanism and the single access point.
- 41. In line with the joint opinion European Data Protection Board (EDPB) and the European Data Protection Supervisor (EDPS), Member States largely agree that Article 34(4) of the draft Regulation should specify that payment service providers must pseudonymise personal data in such a manner that these data can no longer be attributed by the Eurosystem to an individual digital euro user without the use of additional information.** Some Member States would like to see clarifications as to what the state-of-the-art security and privacy-preserving measures would be to ensure this purpose. It is pointed out by the Commission that the draft Regulation should be neutral regarding the chosen technology in this respect and that it falls on payment service providers to select and implement the measures that they deem most appropriate. In this regard, reference is also made to the notions of state-of-the-art measures within the meaning of Articles 25 and 32 of GDPR.

42. One Member State presented a non-paper proposing to apply the framework for selective privacy covered in Article 37 to all low-value proximity payments, regardless of whether they are online or offline. Under this proposal, payment service providers should not process or retain any transaction data, including for AML/CFT purposes, when processing low value payments executed in proximity between the payer and the payee. The non-paper proposes further technical exploration, an analysis of the trade-offs and a consultation of the stakeholders. Several Member States expressed an interest in further exploring the proposal, particularly with a view to facilitate user experience and transactions for merchants, to increase resilience and ensure scalability, and to ultimately enhance the attractiveness of the digital euro. Other Member States point out that the non-paper raises important challenges, including the technical feasibility, implementation costs for PSPs, AML/CFT concerns, questions around the level playing field with existing private means of payments, the difficulty of detecting and reimbursing fraudulent transactions, and the impact on the compensation model. The Commission furthermore considers that any exceptions to the current AML/CFT framework should be carefully justified and restricted to a responsible minimum in line with the risk-based approach, and that the proposal therefore limits Article 37 for offline payments only. The ECB and the Commission expressed their willingness to further engage on the topic.

Processing of personal data by the Eurosystem

43. Member States generally agree that the list of purposes for which the Eurosystem may process personal data should be as exhaustive as possible. Member States therefore favour, for example, adding to Article 35(1) of the draft regulation the purposes of supporting the detection and prevention of fraud as well as the dispute mechanism.

44. Member States also generally agree that it is worthwhile to further clarify what the privacy-preserving measures for processing personal data entail. In line with the definition of pseudonymisation in Article 4(5) of the GDPR, it could therefore be clarified that the Eurosystem should implement technical and organisational privacy-preserving measures to ensure that the processing of personal data is carried out in such a manner that the Eurosystem cannot directly identify digital euro users on the basis of information it processes without the use of additional information, provided that such additional information is kept separately. This requirement could be observed through the implementation of various pseudonymisation and segregation techniques.

Processing of personal data by providers of support services

45. Several Member States support an amendment of Article 36(5) to reflect the actual distribution of responsibilities between the Eurosystem and providers of support services. This would reflect the opinion of the European Data Protection Board (“EDPB”) and the European Data Protection Supervisor (“EDPS”), who pointed out that the determination of the role of the controllers in legislative acts must be aligned with the actual responsibilities attributed to these actors in these legislative acts, and that such attribution cannot be determined on the basis of the current wording of the draft Regulation.

Annexes III to V

46. Several Member States are of the opinion that Annexes III to V of the draft Regulation may need to be further complemented, at a later stage of the Council negotiations, with the specific types of data that payment service providers, the Eurosystem and providers of support services may process. If Annexes III to V cannot be complemented during the Council negotiations for lack of precise technological design choices by the ECB, the Commission may still amend these Annexes at a later stage by delegated act as foreseen in Articles 34, 35 and 36 of the draft Regulation.

E. DISTRIBUTION OF COMPETENCES UNDER CHAPTER V

47. At the Council Working Party of 30 May 2024, the Presidency tabled a discussion on the distribution of competences between the co-legislators and the ECB under Chapter V. The topic was first introduced and discussed under the Spanish Presidency, with several Member States highlighting the importance of further discussing this issue. To facilitate the discussion on the extent to which the ECB should be competent under Article 16 of the draft Regulation to limit the use of the digital euro as a store of value, the Presidency circulated a questionnaire among Member States.

Limits to the use of the digital euro as a store of value

48. Many Member States support further enhancing the role of the co-legislators in determining how the digital euro's store of value function should be limited. These Member States argue, among other things, that co-legislators are competent for determining the regulatory dimension of the digital euro under Article 133 TFEU and that holding limits primarily serve the objective of safeguarding financial stability, for which the ECB has only a contributory role. They consider that defining maximum holding limits will not prevent the ECB from exercising its competence to define and implement monetary policy, that the digital euro is not meant to be used as a monetary policy instrument and that currency is a sovereign matter within the competences of the co-legislators. Other Member States stress that Article 133 TFEU applies without prejudice to the powers of the ECB and consider that the ECB is exclusively competent to set digital euro holding limits. Some of these Member States consider that the draft Regulation should merely stipulate that holding limits shall apply uniformly in the euro area.

49. The Commission and the ECB underline that rules set by the co-legislators should be in line with the competences attributed to the different institutions under the Treaties.

In their view, the ECB is exclusively competent to authorise the issuance of the digital euro and to decide on when and which amounts to issue; this necessarily entails that the ECB should not be restrained in exercising these competences by maximum (and possibly also minimum) holding limits determined by the co-legislators, as it would have an impact on its monetary base. According to the Commission and the ECB, the need to preserve financial stability does not empower the legislature to impinge directly on the powers the treaties grant to the European Central Bank, in particular the exclusive power to decide on issuance and determine the volume of issuance of the euro. Furthermore, the ECB is of the opinion that the size and composition of the monetary base should be under their control as a precondition for effective monetary policy implementation.

50. The Council Legal Service presented their views as regards the competences of,

respectively, the co-legislators and the ECB under Article 133 TFEU, and, more specifically, their interpretation of the limits of those respective competences as regards the development of instruments to limit the use of the digital euro as a store of value. They also indicated possible ways of further developing Article 16 of the draft Regulation while remaining within the regulatory dimension of the monetary policy under Article 133 TFEU.

51. The Presidency believes that options for further clarifying the role of the co-legislators can be explored possibly also at a higher political level.

- 52. Member States agree that the ECB should not be competent under article 17 of the draft Regulation for determining the caps on merchant service charges and inter-PSP fees.** Member States consider that the ECB is not competent to regulate fees and often see no link with the ECB's competences under the Treaties. The interventions of the ECB should be limited to providing technical assistance, monitoring developments and publishing relevant data. In line with its opinion of 31 October 2023, the ECB shares the views expressed by these Member States.
- 53. Many Member States are of the opinion that the Commission should be responsible for developing the methodology for setting fee caps and for actually setting these caps, either by delegated or implementing act.** Some Member States consider that the methodology should as much as possible be contained in the draft Regulation itself, and that in any case as little margin for appreciation as possible should be left to the Commission when deciding on the actual price caps. The Commission is of the opinion that setting of price caps does not envisage the regulation of the payments market, but that it is of a monetary nature since it aims to ensure the effective use of the digital euro as the single currency and to prevent erosion of the face value of digital euro payments.

F. DISTRIBUTION OUTSIDE OF THE EURO AREA

- 54. At the Council working party meeting on 26 March 2024, the Presidency held discussions on** access to the digital euro by natural or legal persons who are not residents or established in a euro area Member State. To support these discussions, the Presidency provided a detailed discussion note that gave particular attention to the access to the digital euro by visitors and by residents of non-euro area Member States and third countries.
- 55. As a matter of principle, many Member States are of the opinion that non-euro area natural and legal persons should not be granted general access to the digital euro and that such access would need to be subject to certain conditions.** These conditions would need to be defined in the draft Regulation and, more specifically, in prior arrangements to be concluded between the ECB and the central banks or competent authorities of non-euro area Member States or third countries. Some Member States consider that such agreements are not necessary. With regard to third countries, some Member States have expressed doubts about the distribution of digital euros by financial entities not supervised by the EU, with the risk of regulatory divergence. Member States frequently referred to the G7 principles¹, according to which Central Bank Digital Currencies (CBDCs) should be designed to avoid risks of harm to the international monetary and financial system. At the same time, several Member States encouraged the Eurosystem to provide further analysis of the potential impacts of an international use of the digital euro and reserved their further positions until such analysis has been conducted.

¹ See principle 7 of the G7 [Public Policy Principles for Retail Central Bank Digital Currencies](#).

- 56. A majority of Member States support the previous Presidency's drafting suggestion to grant general access to the digital euro for citizens of the Union who do not reside in a euro area Member State but who exercise their rights of free movement in a euro area Member State.** Thus, citizens of the Union who reside outside the euro area but who exercise their right to work, study or provide services as a self-employed person in a euro area Member State should be allowed to use the digital euro while exercising their free movement rights without being subject to an arrangement between the ECB and the central bank of the country where they reside. This view is, however, not shared by all Member States, some of which argue that the principle of their monetary sovereignty should in any case prevail. The Presidency supports the preservation of the drafting suggestion proposed by the Spanish Presidency.
- 57. Likewise, a majority of Member States supports the Commission's proposal that visitors should be granted general access to the digital euro while visiting a euro area Member State, without the need for an agreement between the ECB and the central bank of their country of residence as per Article 18.** Nonetheless, several Member States point out that the practical implications of granting general access to visitors should be further examined, including what should happen to digital euro holdings when visitors return to their country of residence. Consequently, some Member States hint that the ECB may need to further examine the possible monetary consequences of granting general access to visitors.

58. A majority of Member States are of the view that visitors should have free-of-charge access to basic digital euro payment services. As is also the case for euro area residents, payment service providers should be able to charge visitors for the provision of additional services above and beyond basic digital euro payment services, such as for the conversion of non-digital euro holdings in digital euro. The Commission stands by its proposal that visitors should have free access to basic digital euro service, in the same way as they have free access to euro banknotes and coins when visiting a euro area Member State, as they would use the digital euro as legal tender during their visit to the euro area.

Merchants established in a non-euro area Member State

59. Some Member States believe that merchants established in a non-euro area Member State should be allowed to accept the digital euro as means of payment from euro area citizens without the need for an agreement as per Article 18. This would ensure a level playing field for payments acceptance across the EU.

Signing of an arrangement

60. Member States consider it sufficient to allow central banks of Member States whose currency is not the euro to enter directly into legally binding arrangements with the ECB, thereby respecting their institutional independence and avoiding Member States entering into commitments on behalf of their central banks. Some Member States consider that such agreements are not necessary. A few Member States find that the conditions for the conclusion of agreements, as stated in Article 18(2), should be further specified and that it must be possible to adapt individual arrangements to national circumstances.

61. Member States believe it sufficient to make the entry into force and applicability of such arrangements conditional on Member States adopting the necessary national laws to ensure compliance with the relevant digital euro requirements. This follows a request from some Member States suggesting that non-euro area countries should not be required to amend their national legislation before signing an Article 18 arrangement. However, the Commission points out that its proposal is based on precedents like the SSM, and that given the sensitive nature of the matter it is preferable that national parliaments have debated and decided on the necessary national laws before an arrangement is concluded.

G. FINAL PROVISIONS

62. The final provisions of the draft Regulation were discussed at the Council Working Party on 29 February. The Presidency presented a detailed discussion note, reviewing the Chapter article by article, inviting Member States to express their views on these provisions.

Delegated acts

63. A majority of Member States agree that the Commission should be empowered to adopt delegated acts in accordance with the provisions of Article 38 of the draft regulation, subject to further clarifications of the scope of the referenced articles. Member States agree that this power should extend to amending the Annexes of the draft Regulation that prescribe which types of personal data may be processed by different stakeholders.

Entry into force

- 64. Many Member States could in principle agree with the Presidency's view that the draft Regulation should ensure that stakeholders are given sufficient time to prepare for the launch of the digital euro once the Eurosystem has decided on its issuance.** It is in any event clear that the Eurosystem may not authorise the issuance of the digital euro prior to the establishment of that new form of central bank currency by the legislator by means of the Regulation. Member States propose various solutions to ensure that all stakeholders are given sufficient time to prepare for the launch of the digital euro. The Presidency believes that it could be provided in Article 42 that the Regulation would only become applicable after a certain period (e.g., 18 months) after its entry into force, thus allowing all stakeholders sufficient time, between the entry into force of the Regulation and the date of its application, to prepare for the actual launch of the digital euro.
- 65. In connection with the previous topic, some Member States argue that the ECB should only authorise the issuance of the digital euro after a scrutiny of the design of the digital euro by the co-legislators.** At least one of these Member States argues that the co-legislators should adopt a second decision endorsing the actual issuance of the digital euro. The Council Legal Services recalled their views on the respective competences of the co-legislators and the ECB under Article 133 TFEU in this regard.

III. PROVISION OF DIGITAL EURO SERVICES BY PAYMENT SERVICES PROVIDERS INCORPORATED IN MEMBER STATES WHOSE CURRENCY IS NOT THE EURO

66. The Presidency invited Member States to provide a second round of written comments to the proposal for a Regulation on the provision of digital euro services by payment service providers incorporated in Member States whose currency is not the euro. This allowed Member States to factor in the relevant discussions that so far have taken place regarding the digital euro draft Regulation.

67. Based on the written comments received, Member States generally appear to agree on the content of this draft regulation, although some aspects still require further clarifications. Several Member States mention the importance of consistency with the digital euro regulation and with other relevant regulations. Some Member States mention that when the text refers to another regulation, the specific provisions of that text should be clearly referred.

68. Member States appear to agree that the date of application of the legislative proposal should be aligned with the date of application of the digital euro Regulation. To that extent, several drafting suggestions have been made, requesting the entry into force of the legislative proposal either on or after the date of entry into force of the digital euro Regulation.