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COVER NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
Subject:	Single currency package: Proposal for a Regulation of the European Paliament and of the Council on the provision of digital euro services by non-Euro area payment service providers (2023/0211 (COD)) • Mandate for negotiations with the European Parliament

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank 2 ,

Having regard to the opinion of the European Economic and Social Committee 3 ,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) The Commission emphasised in the Digital Finance and Retail Payment Strategies of September 2020 that a digital euro, as a retail central bank digital currency, would act as a catalyst for innovation in payments, finance and commerce in the context of ongoing efforts to reduce the fragmentation of the EU retail payments market.

(2) Regulation (EU) [*please insert reference – proposal for a Regulation of the European Parliament and the Council on the establishment of the digital euro – COM(2023) 369 final*] on the establishment of the digital euro establishes the digital euro and lays down rules concerning it, in particular as regards its legal tender status, distribution, use and essential features, with a view to adapting the euro to technological changes and to ensuring its use as a single currency.

(3) It is essential to ensure that all payment services providers, whether incorporated in Member States whose currency is the euro or in Member States whose currency is not the euro, may distribute the digital euro and therefore exercise their freedom to provide services in the Union. The provision of digital euro payment service by all payment services providers would contribute to a high level of innovation, facilitate payments and increase competition across the Union and is necessary to safeguard the integrity of the single market. All payment services providers incorporated in the Union should therefore be in a position to distribute digital euro payment services under the same conditions to natural or legal persons residing or established in the Member States whose currency is the euro, to natural or legal persons who opened a digital euro payment account at the time they resided or were established in Member States whose currency is the euro, but no longer reside or are established in such Member States, and to visitors in the euro area. Payment services providers incorporated in Member States whose currency is not the euro should also be in a position to distribute the digital euro to any other natural or legal persons residing or established in Member States whose currency is not the euro and in other countries of the European Economic Area or any third countries subject to the conditions laid down in the Regulation (EU) [*please insert reference – proposal for a Regulation of the European Parliament and the Council on the establishment of the digital euro – COM(2023) 369 final*].

(4a) Where credit institutions incorporated in Member States whose currency is not the euro serve a significant number of natural persons residing in Member States whose currency is the euro, those natural persons may reasonably expect access to mandatory digital euro services under comparable conditions to those applied by credit institutions incorporated in Member States whose currency is the euro. To ensure access to digital euro payment services for natural persons permanently residing in Member States whose currency is the euro, safeguard a level playing field on the internal market and prevent distortions of competition, while ensuring proportionality, distribution requirements applicable to such credit institutions should be limited to cases where credit institutions have significant activity in Member States whose currency is the euro. Such thresholds should ensure that distribution obligations arise only where a credit institution, at the group level, maintains a stable and substantial customer base in Member States whose currency is the euro, whose size and permanence justify the imposition of such obligations, thereby avoiding requirements for credit institutions whose activity is of insufficient significance for ensuring access to the digital euro and ensuring that this Regulation does not go beyond what is necessary in accordance with the principle of proportionality. In that context, and for the purpose of assessing whether the threshold for a significant number of natural persons served is met, only clients who are permanently residing in a Member State whose currency is the euro should be taken into account. This is to ensure that credit institutions incorporated in a Member State whose currency is not the euro are not subject to disproportionate obligations that would be based on clients who reside in a Member State whose currency is the euro only temporarily, such as those arising from short-term study periods, temporary work contracts or similar arrangements.

(4b) To ensure proportionality of the obligations under this Regulation, credit institutions incorporated in Member States whose currency is not the euro should not be required to provide digital euro payment services to their clients – natural persons permanently residing in a Member State whose currency is the euro, where the client holds a payment account with any payment service provider that provides digital euro payment services. In such cases, the responsibility for ensuring access to digital euro payment services should rest with the credit institution incorporated in a Member State whose currency is the euro. In order to verify whether or not a natural person residing in a Member State whose currency is the euro already holds such a payment account, credit institutions should be able to rely on a declaration of honour provided by that client.

(4c) Credit institutions incorporated in Member States whose currency is not the euro and subject to distribution obligations are free to refer natural persons residing in a Member State whose currency is the euro to branches or subsidiaries of the credit institution in a Member State whose currency is the euro, in order to facilitate access to digital euro services under the described circumstances. Such referrals would facilitate access to digital euro services through the most operationally efficient channel, while avoiding unnecessary duplication of compliance and IT integration across jurisdictions, by leveraging infrastructures within the euro area, and without being required to establish additional technical connections to the digital euro platform in multiple Member States outside the euro area.

(4ca) Payment service providers incorporated in a Member State whose currency is not the euro, and that provide acquiring services for comparable means of payment to merchants established in a Member States whose currency is the euro can be considered as actively competing with acquirers incorporated in a Member States whose currency is the euro and operating on the euro area market. In order to safeguard a level playing field, and to ensure that merchants subject to the mandatory acceptance of digital euro within the meaning of Regulation (EU) [*please insert reference – proposal for a Regulation of the European Parliament and the Council on the establishment of the digital euro – COM(2023) 369 final*], are not required to change their acquiring payment service provider solely for the purposes of complying with that obligation, such payment service providers should therefore be required, upon request, to provide their existing clients with mandatory digital euro acquiring services in the virtual or physical environment in which they already operating.

(4d) Payment services providers incorporated in Member States whose currency is not the euro that are subject to the obligation to distribute the digital euro in accordance with this Regulation or that have chosen to provide digital euro payment services, should apply the same rules as payment services providers incorporated in Member States whose currency is the euro for the purposes of distributing the digital euro. That is essential in order to ensure that the distribution of the digital euro by all payment services providers incorporated in the Union takes place in a uniform manner.

(5) The provision of digital euro payment services by payment services providers incorporated in Member States whose currency is not the euro, should be subject to the same supervisory standards than those applied to payment services providers incorporated in Member States whose currency is the euro. For that purpose, the relevant provisions of Directive (EU) 2015/2366 of the European Parliament and the Council, and Directive (EU) 2024/1640 of the European Parliament and of the Council should apply to the supervision by competent authorities and the enforcement regime and supervisory arrangements between the competent authorities of the home Member States and of the host Member States, concerning provision of digital euro payment service by payment services providers established in Member States whose currency is not the euro.

(6) Similarly, as in case of competent authorities of Member States whose currency is the euro under Regulation (EU) [*please insert reference – proposal for a Regulation of the European Parliament and the Council on the establishment of the digital euro – COM(2023) 369 final*], the competent authorities responsible under Directive (EU) 2015/2366 for supervising the provision of payment services should also cooperate with the European Central Bank for the purposes of supervising the application of payment-related obligations laid down in Regulation (EU) [*please insert reference – proposal for a Regulation of the European Parliament and the Council on the establishment of the digital euro – COM(2023) 369 final*].

(7) In accordance with Article (4), point (25), of Directive 2015/2366, funds mean banknotes and coins, scriptural money or electronic money. As a new form of central bank money with legal tender, the digital euro should be considered as funds under Directive (EU) 2015/2366 which extends the definition of funds to all forms of central bank money issued for retail use. The same definition of funds should be included in Regulation (EU) 2021/1230 of the European Parliament and of the Council of 14 July 2021 on cross-border payments in the Union.

(8) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States as rules applicable to payment services providers should be the same regardless of whether they are incorporated in a Member State whose currency is the euro or not, but can rather, by reason of the scale or effects of the action to ensure the integrity of the single market, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(9) The European Data Protection Supervisor and the European Data Protection Board were consulted in accordance with Article 42 of Regulation (EU) 2018/1725 and delivered a joint opinion on [XX XX 2023],

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

This Regulation lays down rules concerning:

(a) the specific obligations that payment service providers incorporated in Member States whose currency is not the euro shall apply when providing digital euro payment services;

(b) the supervision and enforcement of the obligations referred to in point (a) by the Member States whose currency is not the euro;

(c) the specific obligations that original equipment manufacturers of mobile devices and providers of electronic communication services within the meaning of Article 2(1) Directive (EU) 2018/1972 established in Member States whose currency is not the euro shall apply in relation to the digital euro.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

1.‘digital euro’ means the digital form of the single currency available to natural and legal persons as defined in Article 2, point (1), of Regulation (EU) [*please insert reference – proposal for a Regulation of the European Parliament and the Council on the establishment of the digital euro – COM(2023) 369 final*];

2.'payment service providers' means a payment service provider as defined in Article 4, point (11) of Directive (EU) 2015/2366;

3.‘digital euro payment service’ means digital euro payment service as defined in Article 2 point (8), of Regulation (EU) [*please insert reference – proposal for a Regulation of the European Parliament and the Council on the establishment of the digital euro – COM(2023) 369 final*];

4.‘residing’ means being legally resident in the Union as defined in Article 2, point (2), of Directive 2014/92/EU of the European Parliament and of the Council 7 ;

5.‘visitor’ means a natural person as defined in Article 2, point (22), of Regulation (EU) [*please insert reference – proposal for a Regulation of the European Parliament and the Council on the establishment of the digital euro – COM(2023) 369 final*];

6.‘Member State whose currency is not the euro’ means a Member State in respect of which the Council has not decided that it fulfils the necessary conditions for the adoption of the euro in accordance with Article 140 TFEU;

7.‘mobile device’ means a mobile device as defined in Article 2, point (31), of Regulation (EU) *[please insert reference – proposal for a Regulation of the European Parliament and the Council on the establishment of the digital euro – COM(2023) 369 final*];

8.‘credit institution’ means a credit institution as defined in Article 4(1), point (1), of Regulation (EU) No 575/2013 of the European Parliament and of the Council.

Article 3

Provision of digital euro payment services

1. Within the framework of Directive (EU) 2015/2366, payment services providers incorporated in the Member States whose currency is not the euro may provide digital euro payment services to:

(a) natural and legal persons residing or established in the Member States whose currency is the euro;

(b) natural and legal persons who opened a digital euro payment account at the time they resided or were established in the Member States whose currency is the euro, but no longer reside or are established in such Member States;

(c) visitors to Member States whose currency is the euro;

(d) natural and legal persons residing or established in Member States whose currency is not the euro, subject to the conditions laid down in Article 18 of the Regulation (EU) [please insert reference – proposal for a Regulation of the European Parliament and the Council on the establishment of the digital euro - COM(2023) 369 final];

(e) natural and legal persons residing or established in third countries, including territories under a monetary agreement with the European Union, subject to the conditions laid down in Articles 19 and 20 of the Regulation (EU) [please insert reference – proposal for a Regulation of the European Parliament and the Council on the establishment of the digital euro - COM(2023) 369 final].

(f) Citizens of the Union who reside in a Member State whose currency is not the euro or in a third country, and legal persons established in a Member State whose currency is not the euro where these citizens or legal persons exercise their free movement rights in a Member State whose currency is the euro;

(g) Citizens of a third country that benefit from a specific arrangement creating free movement rights in a part of the Union.

2. Credit institutions incorporated in a Member State whose currency is not the euro shall, upon request of their client – a natural person referred to in Article 12a(1), point (a) of Regulation (EU) No X on the establishment of the digital euro, provide such natural person with all mandatory digital euro payment services as referred to in Annex II of Regulation (EU) No X on the establishment of the digital euro where all of the following conditions are met:

(a) The credit institution incorporated in a Member State whose currency is not the euro provides payment services as referred to in points (1), (2) or (3) of Annex I to Directive (EU) 2015/2366 to natural persons residing in a Member State whose currency is the euro;

(b) The credit institution incorporated in a Member State whose currency is not the euro, provides the services listed in point (a) to more than 500.000 natural persons residing in the euro area as a whole or 5 pct. of natural persons residing in a single Member State whose currency is the euro, for three consecutive years, and;

(c) The natural person acting as a consumer residing in a Member State whose currency is the euro does not hold a payment account, as defined in Article 2, point (3) of Directive (EU) 2014/92, with any payment service provider that provides mandatory digital euro payment services in accordance with Regulation (EU) No X on the establishment of the digital euro.

3. Credit institutions incorporated in a Member State whose currency is not the euro that are subject to the obligations set out in paragraph 2 may, for the purpose of fulfilling these obligations, refer clients who are entitled to receive the services referred to in paragraph 2 and who request those services to a branch or subsidiary of the credit institution located in a Member State whose currency is the euro. Such referral shall be deemed to fulfil the obligations set out in paragraph 2.

4. Credit institutions incorporated in a Member State whose currency is not the euro which have fulfilled the conditions set out in paragraph 2 but which have not fulfilled those conditions for three consecutive years shall no longer be obliged, upon request of any new client – a natural person referred to in Article 12a(1), point (a) of Regulation (EU) No X on the establishment of the digital euro, to provide that client with the mandatory digital euro payment services referred to in Annex II of that Regulation.

Clients who already hold a digital euro payment account with the credit institution concerned shall retain the right to continue receiving the mandatory digital euro payment services referred to in Annex II of Regulation (EU) No X on the establishment of the digital euro.

Article 3a

Provision of digital euro acquiring services

Payment service providers incorporated in a Member State whose currency is not the euro shall comply with Article 14(1a) of Regulation (EU) No X on the establishment of the digital euro in respect of their clients established in Member States whose currency is the euro who are payees subject to the mandatory acceptance of digital euro within the meaning of Article 7(3) of that Regulation, insofar as they already provide those clients with acquiring services for comparable means of payment.

Article 4

Applicable law

1. Without prejudice to the provisions of this Regulation, the requirements laid down in Article 13, Chapter V, Article 18, Chapter VII, Chapter VIII, Chapter IX and Chapter IXa of Regulation (EU) No X on the establishment of the digital euro, shall be applicable to payment service providers incorporated within the territory of Member States whose currency is not the euro that provide digital euro payment services in accordance with Article 3(1) and 3(2) of this Regulation.

The requirement laid down in Article 33 of Regulation (EU) [*please insert reference – proposal for a Regulation of the European Parliament and the Council on the establishment of the digital euro – COM(2023) 369 final*] shall be applicable to original equipment manufacturers of mobile devices and providers of electronic communication services within the meaning of Article 2 (1) Directive (EU) 2018/1972 established in Member States whose currency is not the euro.

2.In accordance with Article 4(25) of Directive (EU) 2015/2366 of the European Parliament and of the Council, of 25 November 2015, on payment services in the internal market, the provisions of that Directive shall apply to payment transactions in digital euro.

3. In accordance with Article 2(10) of Regulation (EU) 2021/1230 of the European Parliament and of the Council of 14 July 2021 on cross-border payments in the Union, the provisions of that Regulation shall apply to payment transactions in digital euro.

4. Without prejudice to Articles 37 of Regulation [*please insert reference – proposal for a Regulation of the European Parliament and the Council on the establishment of the digital euro – COM(2023) 369 final*], Directive (EU) 2024/1640 of the European Parliament and of the Council, of 31 May 2024, on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds shall apply with respect to the digital euro.

Article 5

Competent authorities

1. Directive (EU) 2015/2366 of the European Parliament and of the Council shall apply to the supervision by competent authorities and the sanctions regime and supervisory arrangements between the competent authorities of the home Member States and of the host Member States, concerning the activities of payment service providers established in Member States whose currency is not euro in relation to the digital euro for the purposes of applying this Regulation and the obligations referred to in Chapters IV, V, VI and VII of Regulation (EU) [*please insert reference – proposal for a Regulation of the European Parliament and the Council on the establishment of the digital euro – COM(2023) 369 final*].

2. Directive (EU) 2015/843 shall apply to the supervision by competent authorities and the sanctions regime and supervisory arrangements between the competent authorities of the home Member States and of the host Member States concerning the activities of payment service providers incorporated in Member States whose currency is not the euro established in relation to the digital euro for the purpose of applying this Regulation and the obligations contained in Chapter IX of Regulation (EU) [*please insert reference – proposal for a Regulation of the European Parliament and the Council on the establishment of the digital euro – COM(2023) 369 final*].

Article 6

Cooperation with the European Central Bank

For the purposes of supervising the application of Chapters IV, V and VII of the Regulation (EU) [*please insert reference – proposal for a Regulation of the European Parliament and the Council on the establishment of the digital euro – COM(2023) 369 final*] the competent authorities referred to in Article 4(1) shall cooperate with the European Central Bank.

Article 7

Amendments

Article 2(10) of Regulation (EU) 2021/1230 of the European Parliament and of the Council of 14 July 2021 on cross-border payments in the Union is replaced by "'funds' means central bank money issued for retail use, scriptural money or electronic money".

Article 8

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.