

Have your say - Digital euro.

The Spanish banking industry welcomes the opportunity to provide its feedback to the European Commission on the *Proposal for a Regulation on the establishment of the digital euro*, released on the 28th of June 2023.

We welcome the European Commission's efforts to balance relevant policy objectives and try to limit the potential negative impact on the eurozone economy and financial system.

In line with our June 2022 submission to the European Commission's targeted consultation on a digital euro, we are of the view that preserving financial stability and the ability of the banking sector to support the real economy should be an absolute priority in the design of a possible digital euro.

There are yet too many unanswered questions around the need and the **value-added of a digital euro for citizens and merchants** compared to existing payment solutions that require a comprehensive debate at political level, alongside the negotiation of the legislative proposal. Thus, **we support a prudent approach** by the authorities to thoroughly evaluate the challenges and implications of its possible issuance and implementation.

General Comments on the Digital Euro initiative

Banks can play a key role in the adoption of the digital euro, should it be issued, by bringing it closer to citizens and businesses, and integrating it into their daily financial lives. To this end, it will be crucial that the digital euro's **design allows banks to create value, while avoiding potential negative** effects.

In this context, we propose the following **recommendations**:

1. **The digital euro should be designed as a means of payment and not as a store of value.** Depending on where the holding limit is set, the digital euro could have a significant impact on banks' funding. Individual holding limits on digital euros must be set in line with the daily payment needs of European citizens, as well as limits on the maximum amounts of digital euro payments. The digital euro should not be an investment tool.
2. **The digital euro must ensure users' privacy and sovereignty in terms of data protection, as well as compliance with the anti-money laundering framework.** European citizens must have the right to allow regulated intermediaries to use their data, guaranteeing both security and privacy, to create customized value-added services.
3. **Distribution should be secure and in the domain of regulated entities.** Only regulated payment service providers authorized to provide payment accounts should be able to act as digital euro intermediaries. Ensuring cyber



resilience will also be a key issue. All actors involved (authorised entities, telecommunication companies, mobile device manufacturers, ...) should have clear cyber resilience responsibilities to ensure the robustness of the digital euro ecosystem.

4. **The digital euro could leverage the existing instant payment infrastructure.** This would allow for the efficient implementation of the use cases proposed by the ECB, while avoiding the cost of setting up a completely new infrastructure. In addition, the digital euro could also leverage existing national payment solutions, such as Bizum in Spain, to facilitate its implementation and boost its adoption by individuals and businesses, while giving these solutions a European scale.
5. **It is paramount to provide the right incentives for intermediaries to distribute the digital euro and provide related services,** as well as for the development of new value-added functionalities. The compensation model must be able to offset the impact on costs and investments made by intermediaries and be equivalent to that of other private payment solutions, so that the digital euro can compete on an equal footing.

The digital euro can be a milestone with far-reaching implications for citizens and all European financial market participants, including the Eurosystem itself, as well as for financial stability.

Therefore, the Spanish banking industry believes that the implications of the issuance must be discussed in depth and calmly, after a rigorous analysis of costs and benefits, and incorporate a flexible and extensive timeline for its possible implementation. We should not lose sight of central banks that have adopted a gradual approach to digital currency initiatives (e.g., United States, United Kingdom, Sweden, etc.) that also mitigates “early adopter risks”.

Based on these principles, see below our preliminary comments on the proposal. We are still analysing the legal text with our members and therefore, what we provide is an initial assessment of the most relevant issues, so far identified.

We will continue to analyse the legislative proposal and we will be ready to engage in additional discussions and consultations on this topic, or to clarify any aspect of our submission.

Specific comments to the proposal for regulation based on our principles:

1. The digital euro should be designed as a means of payment and not as a store of value

We welcome the European Commission’s mandate to the ECB to safeguard financial stability through the use of adequate measures that ensure that store of value usages are discouraged. Limiting the holdings of digital euros is indispensable to



prevent undesirable effects on the stability of the financial system. However, the following changes are proposed:

- **The legal framework should more clearly establish the obligation of a holding limit and set more concrete criteria on its parametrization** (E.g., including references to cash held by citizens¹ or the daily needs of citizens to pay digitally), as well as a governance framework that clearly sets under which circumstances and how the limit can be changed.
- The regulation should also ensure an **orderly and smooth transition** regarding its implementation. It is fundamental to avoid **any potential abrupt adoption scenarios**, which would increase the negative impacts on financial stability and credit provision.
- The **definition of the limit and any change should be supported by a specific and detailed impact assessment (QIS)**.
- Given that even the lowest limit might have an impact on banks' funding and credit provision, **the principle should be setting the lowest limit possible that would match citizens' daily payment needs**. Note that **low holding limits will in no way prevent citizens from paying with digital euros**, given that the "reverse waterfall" functionality would allow citizens to make payments exceeding their holding limit.
- **The limit on digital euro holdings should be stable over time and be changed only under duly justified circumstances**. Requiring the ECB to provide a **report at least 6 months** before the implementation of any changes could contribute to the stability and good governance of the limit.
- It should also be clarified in the regulation that different users might have different limits, and to mention E.g., that a **zero-holding limit applicable to merchants should be included**.

Finally, we support that **the digital euro cannot bear interest**, which rules out the possibility of tiered remuneration (a system that in our view would not be effective to limit the store of value) and makes it more similar to cash than to bank deposits. However, in order to avoid potential measures taken on the sidelines of this regulation, it should be made clear in the legal text that the digital euro shall not bear interest, regardless of the regulation.

2. The digital euro must ensure users' privacy and sovereignty in terms of data protection, as well as compliance with the anti-money laundering framework.

European citizens must have the right to allow regulated intermediaries to use their data, guaranteeing both security and privacy, to create customized value-added

1 In this sense, according to the latest ECB survey on consumer payment habits in the euro area, citizens held an average of 83 euros in their wallets.

https://www.ecb.europa.eu/stats/ecb_surveys/space/html/ecb.spacereport202212~783ffdf46e.en.html



services. It should be clarified that **transactional data will be available for intermediaries to provide value added services in compliance with GDPR.**

- **We harbor some concerns related to the wording of points 1 and 2 of Article 34. GDPR** already regulates access to private data by private intermediaries and should fully apply to the digital euro. The rule clarifies that GDPR will apply e.g., in recital 12 that “*any personal data processing under the present Regulation must comply with Regulation (EU) 2016/679 and Regulation (EU) 2017/1725 insofar as they fall within their respective scope of application*” (see also recitals 70, 72 and 73). However, the provisions included in articles 34 and Annex III seem to limit the application to specific purposes for data processing by intermediaries, and the specific data that will be accessible.
- If the objective of article 34 is to clarify what happens when the data is not used for the purposes listed in this paragraph, it should be explicit that all data that is not processed for those purposes will be treated in accordance with GDPR regulation. Therefore, we **propose 2 alternatives:**
 - deleting this article (34.1 and 2).
 - Alternatively, it could be explicitly stated in the regulation that PSPs may process other alternative data for other purposes, e.g., to provide value-added services, on the basis of the remaining legitimate grounds under the GDPR (e.g., consent of the data subject or performance of the contract).

Anti-money laundering: We welcome that online digital euro payment transactions would follow the same data protection, privacy and AML/CFT rules as for private digital means of payment, consistent with the objectives of the AML package, PSD2 and GDPR.

3. Distribution should be secure and in the domain of regulated entities.

The banking sector supports the model proposed in the regulation in which the ECB would issue a digital euro and PSPs would distribute it. All providers should meet the same standards for robustness of their KYC, AML/CTF, consumer protection, and cyber resilience processes. However, we would make the following considerations:

- The regulation should make clear that **the obligation to provide basic, free digital euro services only applies to PSPs' clients** (in art. 14.2 and art. 22.2), since distributing PSPs would need to compensate for the greater costs of onboarding new users, they have no previous relationship with. This is consistent with Article 14.1 (which specifies that the distribution obligation for credit institutions is “upon request of their clients”) and with Article 14.3, by which Member States will designate a public entity that would provide free basic digital euro payment services to citizens that do not hold a non-digital euro account (e.g., are not clients of a bank).



- As for the provision to make all front-end services interoperable with or integrated in the European Digital Identity Wallets (EUID wallet), the obligation to allow users to rely on their EUID wallet should be limited to those functionalities for which the final text of the eIDAS II Regulation requires private relying parties to accept the use of the identity wallets. That is to say, the interoperability obligations for payment service providers with respect to the European Digital Identity Wallets should be the same for the digital euro as for other digital payment solutions.

4. The digital euro could leverage the existing instant payment infrastructure.

In order to guarantee a common user experience across the euro area and, at the same time, adapt the digital euro to market needs and technological developments, European payment services providers that will distribute the digital euro should directly participate both in the phase of defining the digital euro scheme rulebook and in its governance. This would also be more consistent with how other payment schemes are governed.

Interoperability between standards governing the digital euro and private means of payments is welcomed. However, this obligation should be more clearly directed towards the reusability/leveraging of existing standards governing private means of payment for the digital euro. This would make the digital euro deployment and provision more cost efficient.

We agree also that mobile device manufacturers should allow PSPs and providers of e-ID wallets access to software and hardware features necessary for storing and transferring data to process online and offline digital euro transactions as we believe this is in line with the Digital Markets Act (DMA) and will contribute to level the playing field in digital markets.

5. Provide the right incentives for intermediaries to distribute the digital euro and develop of new value-added functionalities.

A wide and successful deployment of the digital euro would largely depend on an adequate compensation model for distributing PSPs, particularly if they must provide a long list of services free of charge.

Merchant service charges and inter-PSP fees should take into account all PSPs' costs for the provision of digital euro services (plus a reasonable profit margin), also factoring in for example the opening, holding and closing of accounts, as well as initial deployment costs, and not only the costs incurred for the provision of payments (transactions).

Art. 17 should also ensure that the digital euro is designed in a way that makes its relevant costs lower or equal than those of comparable digital means of payments. This would prevent the possibility of a scenario in which merchant service charges and inter-PSP fees are capped by those of comparable digital means of payment (as



per Article 17(2a)) but are not sufficient to cover the relevant costs incurred by PSPs for the provision of digital euro services.

The provision of the digital euro to visitors to the euro area for free basic use should be further examined: payment service providers should be allowed to charge reasonable fees to visitors for the provision of basic digital euro payment services, to compensate for the costs of onboarding new users that have no previous relationship with the PSP, which significantly increases the onboarding costs. This would also be consistent with the current access to euro cash by visitors, which generally entails charges for the use of ATMs.

Moreover, to prevent the use of natural persons' digital euro payment accounts for business purposes, circumventing merchant service charges, payment services providers shall be allowed to establish a proportionate limit on the number of received payment transactions that are free-of-charge and be allowed to charge the exceeding ones according to Article 17(2).

Other elements

Clarification of the concept of user

Besides, **the regulation should be clearer concerning how it will apply to different users.**

- According to the proposal, recital 4, the digital euro would support all retail payment cases, widening the scope of the project to use cases that have not been considered yet during the investigation phase (Eg. B2C, B2B). It should be clarified **what will be the use cases enabled with the proposal (B2B? B2C?)**. If all use cases will be enabled, it should be clarified how the roadmap to enable future use cases will be decided.
- Given the use cases, the definition of "user" in the proposal is very broad. In many articles "user" seems to be referring to citizen, but could be merchant, government, business.... It should be clarified how it will apply. Some examples:
 - Art. 12: It should clarify that different users may have a different limit than citizens (E.g., zero-holding for businesses).
 - Article 17.6. Business users' wallets could have multiple users (business proxies). However, the limit should not be equal to the sum.
 - Business users will be able to pay with offline DE, or just to receive payments?