Brussels, 8 September 2023

Proposal for a Regulation on the establishment of the digital euro

EACB position

The **European Association of Co-operative Banks** (EACB) is the voice of the cooperative banks in Europe. It represents, promotes and defends the common interests of its 26 member institutions and of cooperative banks in general. Cooperative banks form decentralised networks which are subject to banking as well as cooperative legislation. Democracy, transparency and proximity are the three key characteristics of the cooperative banks' business model. With 2,700 locally operating banks and 40,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 227 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 89 million members and 720,000 employees and have a total average market share of about 20%.

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1 Introduction

On 28 June 2023, the European Commission published a package of legislative proposals on open finance and the euro, including a proposal for a Regulation on the establishment of the digital euro (the "Proposal").[1] As stated in our position paper of 27 March 2023, the EACB understands the need to discuss, reflect and research the topic of a digital euro for Europe.[2] We acknowledged that a digital euro is being considered as response to the emergence of private stable coin initiatives around the globe, multiple Central Bank Digital Currency projects by foreign central banks as well as market dominance by non-EU payment service providers. The Proposal is a first step towards a European legal framework for the digital euro. It reflects the ambition of the European Commission and the ECB to accelerate the digital euro project. This position paper is primarily focused on legal aspects of the digital euro project.

2 Digital euro: key positive characteristics

The Proposal outlines the key characteristics of the digital euro. Without prejudice to our reservations to the digital euro project, we agree with the guiding principle that the use of the digital euro as a store of value should be **subject to limits** (art. 15). In line with this principle, we welcome the provisions that the digital euro will **not bear interest** (art. 16.8), is available for **offline payment transactions as of the first issuance** (art. 23.1), is convertible at par with euro coins, banknotes and commercial bank deposits (art. 12 and art. 23.2), facilitates conditional payments (art. 24.1), is **not programmable money** (art. 24.2) and ensures the interoperability of standards governing digital euro payment services with relevant standards governing private payment methods (art. 26).

3 Potential impact on the diversity of banking and the economy

Although we have highlighted some positive characteristics above, various early-stage and **fundamental questions are still open** for debate and are not solved by the Proposal. It is highly doubtful whether the general policy objectives will be reached with the proposed design of the digital euro. In particular, the **long term effects** of the digital euro on the banking system remains under-researched in the impact assessment accompanying the Proposal. As voice of the cooperative banks in Europe, the EACB strongly believes in a diversified European banking landscape where cooperative banks provide their services in close proximity to EU citizens and businesses. Deposits play an important role in the business model of cooperative banks. The introduction of the **digital euro creates pressure on the funding of banks** and will have a **substantial impact on deposit-depending institutions and subsequently on lending capacity, availability and cost of credit for householders and corporates**. This will have consequences for cooperative banking and the diversity of the European banking landscape.[3] A first modelling exercise done by the EACB based on the figures of 5 of its members shows that this impact could be dramatic: a holding limit of Euro 3000 could, for example, in a stress scenario, lead to a deposit outflow of 16.6% and more, a reduction of Liquidity Coverage Ratio by 73.8% and more and Net Stable Funding Ratio reduction by 12.3%. A second exercise had been done for more than 500 banks, confirming these results with a wide spread of impact. Further exercises

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1 Proposal for a Regulation of the European Parliament and of the Council on the introduction of the digital Euro of 28.06.2023, COM (2023) 369 final.

2 Recommendations from Europe's cooperative banks for a Digital Euro, 27.03.2023: https://www.eacb.coop/en/position-papers/banking-regulation/eacb-recommandations-digital-euro.html

3 The assumption made in a recent ECB research paper that cooperative banks will be able to get liquidity from their central institution and will therefore be able to have enough liquidity is not in all situations correct. The central instutution will need liquidity for its own and may not have enough liquidity to provide to its associated banks: "Know your (holding) limits: CBDC, financial stability and central bank resilience", ECB Occasional Paper Series No 326, 2023

by EACB members and other stakeholders are in progress and will be communicated to the policymakers once available.

As we now start the legislative process, the discussion should not only focus on the detailed wording of the Proposal but also on the more fundamental questions, including the necessity and long term effects of a digital euro.

4 ECB mandate, competence, liability and accountability

Another area that needs a more fundamental reflection is the **mandate of the ECB** and its approach to liability and accountability. The ECB is currently responsible for monetary policy, payment oversight and banking supervision. One of the first questions that should be answered is if the ECB is allowed to issue a digital euro in an account-based version. It is questionable whether this design sufficiently resembles banknotes as referred to in art 128 (1) of the Treaty on the Functioning of the European Union. The Proposal will add new tasks and responsibilities. The ECB will be empowered to adopt detailed measures, rules and standards on the design and operations of the digital euro (art. 5.2). Where such measures have an impact on the protection of individuals' rights and freedoms with regard to the processing of personal data, the European Central Bank should *consult* the European Data Protection Supervisor (EDPS; art. 32.2). According to the Proposal, an *approval* of the EDPS is not required, leaving to the ECB the final decision on **privacy protection** within a monetary context. The ECB will also be responsible for setting and adjusting quantitative limits to individual digital euro holdings (art. 16). After the issuance of the digital euro, the ECB will *de facto* become **competitor** with private market actors (payment scheme/distribution and processing). The ECB will have a pivotal function in a centralized EU retail payment ecosystem, making this system **more susceptible for cyberattacks** and other operational risks events. As part of this new role, the ECB will develop front-end services, in direct competition with banks (art. 28.1). However, the ECB would be exonerated from any liability as part of dispute handling mechanisms (art. 27). Moreover, the Proposal mandates the ECB as price regulator for digital euro payment services (art. 17.5). An enhanced system of checks and balances should control this accumulation of powers. However, the Proposal does not provide for a future-proof and balanced system of governance, controls and accountability. It only stipulates that the ECB will report on the digital euro as part of its regular reporting obligations (art. 40).

5 A public good mandatorily distributed by commercial banks

The digital euro would be public money mandatorily distributed by commercial banks. This dissolves the boundaries between public services and private institutions. In particular, banks are required to offer basic digital euro payment services *for free* and without any surcharges to natural persons (art. 10 and 17; the digital euro payment services are specified in Annex 2 of the Proposal). Merchant service charge or inter-PSP fees have to comply with the principle of proportionality. Any merchant service charge or inter-PSP fee shall not exceed the lowest of (a) the relevant costs incurred by payment services providers for the provision of digital euro payments, including a reasonable margin of profit; (b) fees or charges requested for comparable digital means of payment (art. 17.2). **This proposal has the effect that competition is distorted by governmental price setting**.

5.1. Substantial costs

On the expenses side, banks but also merchants will be faced with substantial costs: **implementation costs** related to the operational requirements for the new payment system (e.g. connecting the digital euro wallets to the existing bank accounts), investing in new services devices (for funding and defunding digital euro wallets with cash), increased 'cost-of-compliance' (onboarding, product information, anti-money laundering controls, transaction execution and monitoring, dispute handling) and the **expected financial impact on the funding** and business model (outflows of deposits). Furthermore, multiple digital euro accounts per individual, shared accounts, and limit setting organised by account holders will necessarily add to **complexity** and costs. We also believe that the Proposal and the accompanying impact assessment do not take into account all the above-listed costs types for PSPs. In addition, the list of basic services (annex 2 of the Proposal) should be limited as it will have a significant impact on PSPs costs and income.

5.2. Limited income

On the income-side, it will be challenging for banks to generate a reasonable profit. Services are for free (individuals) or subject to regulated levels (merchants); the ECB will monitor the pricing of digital euro services. The Proposal provides the parameters for the methodology to be developed by the ECB for the monitoring and the calculations of the maximum permitted fees. The **pricing methodology is not adequate** to ensure cost recovery at market level, contradicting the principle that fees should be cost-based. In particular, the methodology seems to ignore (i) the impact of the mandatory distribution of the digital euro by banks and the related implementation costs; (ii) market distortion[4] and unintended effects, favoring (third-country) non-bank payment service providers. 'Digital-only' market entrants are not required to build and maintain the infrastructure for funding and defunding with euro coins and banknotes; (iii) the complexity of a fair allocation of costs, as payment services providers have different business models. We believe at least, that this methodology needs further analyses and stakeholder consultation.

6 Conclusion

EACB welcomes some of the key characteristics of the digital euro as formulated in the Proposal, including its non-interest nature and the use of holding limits. However, we strongly believe that fundamental questions related to the ECB mandate, the negative impact on the financial system and the economy still need to be answered. We recommend reconsidering the proposed design of the digital euro (digital euro should truly be a digital version of euro banknotes and coins, nothing more) and responsibilities of various parties in the process of introducing and operating the digital euro. Should the ECB intend to launch an account-based model, we consider this to be a fundamental break of the existing banking system that is not covered by ECB's mandate. Furthermore, entering into competition with the market would create an unsolvable conflict of interest for which a bearer token with features like cash should be the ultimate solution. More detailed comments on various provisions in the Proposal are provided in the Annex. To conclude, the Proposal leaves many questions unanswered. For this reason, we still have concerns and reservations towards the digital euro project.

[4] There is for example a risk that the choice of payment methods offered to EU-citizens and business will be reduced if they can no longer be offered in an economically attractive way. Additional to that it must be ensured that the Eurosystem does not create a competitive cost advantage over other payment methods by internalizing its own costs, substituting European payment solutions and facilitating the market entry of non-European platforms by providing infrastructures. The desired goal of European sovereignty in payments would be jeopardized by such an approach.

Annex – Detailed comments on the proposal for a Regulation on the establishment of the digital euro

Proposal for a Regulation on the establishment of the digital euro		
Article	**Subject**	**Comments**
7	Legal tender status	7 (4) surcharges on the payment of debt with the digital euro shall be prohibited. In conjunction with art. 10 and 17: these requirements make it unlikely that the distribution of the digital euro will become a viable business model for banks.
9	Exceptions to the obligation to accept the digital euro	We do not support the obligation to accept digital euros if other digital means of payment are accepted. This should be a free decision of the merchant. An obligation for companies with a certain number of employees or turnover is an even greater interference in entrepreneurial freedom.
10	Prohibition of the unilateral exclusion of payments in the digital euro	'A contractual term shall be regarded as not individually negotiated where it has been drafted in advance and where the payer has therefore not been able to influence the substance of the term, particularly in the context of a pre-formulated standard contract.' This acceptance obligation leads to a disadvantage of existing payment methods. Under the law of various Member States, the acceptance of legal tender can be excluded in standard terms.
13	Payment service providers	13 (2) and (3): funding and defunding with cash should equally apply to all PSP's, including PSP's that currently do not provide cash services. 13 (4)(b): We do not support an unlimited reverse-waterfall mechanism. Digital euro transactions should be limited to maximum holding limits. 13(6): We fully support that the ECB should not have direct relationship with digital euro users. However, the ECB should take responsibility for the matters under its control (e.g. settlement issues). We are concerned that this provision shifts liabilities to the commercial banks in the event of any problems arising, which we strongly reject.

14	Access to the digital euro in Member States whose currency is the euro	Para 1, which requires credit institutions have to provide their customers with all basic payment services related to the digital euro (free of charge) at their request for the purpose of providing the digital euro, is excessive and should be deleted. Since, pursuant to Para 3, public authorities or post office giro institutions enable the opening of an account for the digital euro, there is also no need to force banks to provide this service.
15	Principles	'The use of the digital euro *may* be subject to holding limits" is not appropriate as the ECB must have the obligation to set holding limits.
16	Limits to the use of the digital euro as a store of value	16(4) establishing and adjusting holding limits: a solid, holistic and transparent impact analysis should be carried out, with input for academics and the financial sector to make a robust assessment whether the potential deposit outflows can be absorbed by the banking industry and the economy as a whole. The maximum holding amount should be set by the legislator. The ECB is permitted to establish a lower, but not a higher holding amount. 16(6) multiple account and holding limit: the control and request for changes by the accountholder could have substantial implementation costs. 16(7) having multiple account holders per account creates complexity to control holding limits and adds to the costs. 16(8) no interest. The wording "within the scope of this regulation" may leave room for regulations outside the scope of the Proposal. A ban on interest must apply universally and be firmly anchored for the future.
17	Fees on digital euro payment services	17(1) and (2) Market competition is significantly distorted by a governmental setting of fees for merchants. The objectives of a digital Euro can only be achieved if the underlying regulatory framework makes participation in the digital euro as a means of payment and payment procedure equally economically attractive for all parties. The Eurosystem could create a competitive cost advantage over other payment methods by

		internalizing its own costs, substituting European payment solutions and facilitating the market entry of non-European platforms by providing infrastructures. The desired goal of European sovereignty in payments would be jeopardized by such an approach. 17 (5) The methodology is not adequate to ensure cost recovery at market level, contradicting the principle that fees should be cost-based, and may favour those providers that can support digital euro services via cross-subsidisation with other lines of business (e.g. the BigTech). The fees on other digital payment instruments cannot be considered as a maximum to digital euro fees because the costs can be very different.
22	Accessibility and use	Article 14(1) states that banks "shall, at the request of their customers, make available to such persons all basic payment services". Article 22(2), on the other hand, could also be understood in a way that basic services on the digital euro must also be provided free of charge to non-customers. We therefore propose the following adaptation: "In their relationships with their payment services providers for the provision of digital euro payment services, digital euro users shall not be required ~~to have or open non-digital euro payment accounts or accept~~ **to open an additional account for the non-digital euro or to enter into a contract for** other non-digital euro products."
23	Offline and online digital euro payment transactions	We welcome the possibility to use the digital euro offline as well. In this context, it could be argued that digital euro should be designed as a bearer instrument as it could be used for both online and offline transactions and would be "cash like". In particular, offline payments is one main use case of the digital euro and having it designed as bearer instrument is an approach we support.
24	Conditional digital euro payment transactions	We welcome the clarification that the digital euro is not programmable money. The digital euro is intended to be as similar as possible to cash; moreover, programmable money would contradict its status as legal tender.

27	Dispute mechanism	Since the determination of the course of payments in digital euro is conducted by the ECB, just like the operation of the central infrastructure, this responsibility should not be shifted to the credit institutions. The digital euro is a liability of the ECB, which should assume liability for technical problems. Fraud management should therefore not be outsourced to banks free of charge either.
28	Front-end services to access and use the digital euro	28 (1) front-end services developed by the ECB: commercial banks could be forced to de-prioritize the development of their own front-end service, primarily to ensure the legally required connection to the ECB service. Moreover, it is questionable whether the development of front-end services is within its mandate. Should an incorrect transaction or similar occur due to faulty programming of the ECB app, this should fall under the responsibility of the ECB. The more centralized the EU-Retail Payment ecosystem gets, the more susceptible it will be for cyber-attacks from non-European entities/individuals or any vis major events. In a centralized system, a disruption is equivalent to a complete failure for which having more decentralized actors within the payment landscape promises to be more resilient.
29	Compliance with Union sanctions adopted in accordance with Article 215 TFEU	Sanctions regime for digital euro payments should not differ from the rules applicable to other electronic payments. Different regimes for different payment means impact costs. Sanctions screening regime for all electronic payments should be harmonized based on the rules applicable to instant payments.
36	Processing by providers of support services	Provisions related to resilience should be included in the Regulation. Notably, existing legal acts on resilience should be applicable to the ECB for the purpose of the digital euro (DORA, NIS Directive, or similar standards, etc).
37	Anti-money laundering rules applying to offline digital euro payment transactions	Offline payments in combination with anti-money laundering rules would work well with a low amount limit for offline-usable holdings and transactions.

Annex II	Basic digital euro payment services	(b) consulting balances and transactions: clarification is needed - users should be able to consult transaction history covering a limited period (e.g. maximum 1 year). (d) funding and defunding from/into cash. This is a high-cost service that has to be provided to consumers for free. To be removed from the list of basic digital euro services or limit the number of cash-funding transactions.

Contact:

The EACB trusts that its comments will be taken into account.

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