

Presidency note 4 for the Council Working Party - 24 October ***Discussion note on fees (article 17)***

As a way of introduction, let's define the **merchant service charge** (MSC) as a fee paid by the payee to a PSP when acquiring a digital euro payment transaction (as done in article 2.24) and **inter-PSP fee** as a fee paid from the acquirer PSP to the distributor PSP, replicating the remuneration model in four-party card schemes through interchange fees (this definition is not contained in the Regulation). The objective of this inter-PSP fee is to allow PSPs to monetize the distribution of digital euros to users, in a context when they have to provide many of the services for free. Typically, the economics of this remuneration model imply that the MSC consists of the inter-PSP fee (that is translated to the payee) + a scheme fee (the settlement fee)¹ + a profit margin for the acquirer PSP (or acquirer fee).

Article 17 foresees that the ECB shall establish the maximum amount for the MSC and the inter-PSP fee on the basis of an objective methodology, whose main rules are set out within the regulation.

Article 17.1 states that **PSPs cannot charge fees to natural persons² for the provision of the basic** digital euro payment services (Annex II). This is therefore independent on their condition as payer or payee. However, basic services would not be free for two kinds of natural persons: those residing in non-euro MS and those residing in third countries (unless they are visitors in the euro area). The Commission justifies this differentiation in the fact that the digital euro would not have legal tender status in those countries.

The article allows PSPs to charge freely for other non-basic digital euro payment services, such as innovative value-added services. Some MS have raised the fact that natural persons can include self-employed people that are not consumers, leading to an asymmetric treatment regarding commercial legal persons. In this respect, a possibility could be to define natural persons for the purpose of "basic services" as consumers as opposed to "commercial self-employed people". The definition of consumer under PAD could be a solution.

As for the **MSC and the inter-PSP fee**, due to the legal tender nature of the digital euro and in particular the principle of acceptance at face value, these prices should comply with the principle of proportionality and, in particular, **shall not exceed the lowest of the following two amounts:**

¹ Recital 41 specifies that this fee would be zero, since the Eurosystem would not charge for settling digital euro transactions.

² Specifically, it applies to natural persons residing in a euro MS; natural persons who opened a digital euro account at the time they resided in a euro MS but no longer reside there; and visitors.

- (i) the **relevant costs incurred by both distributing and acquirer PSPs** for the provision of digital euro payments, including a reasonable margin of profit;
- What counts as **costs** are the relevant costs incurred for providing digital euro payments by the **most cost-efficient PSPs** representing collectively one fourth of the digital euros distributed across the euro area in a given year (according to article 17(2)(a) and recital 43). The Presidency interprets this provision as: the ECB would order the PSPs distributing digital euros from lower to higher costs; then would cut the list once it reaches 25% of the market share; and then would calculate the average of the costs for these PSPs. That resulting number would be the ceiling applicable to all PSPs (plus margin of profit).
 - In any case, it is not clear, even with the content of the recital, what are the relevant costs to be taken into account, for instance, the Commission clarifies that the intention is to include investment costs that may be amortized over a given period of time. More clarity in this respect could be greatly appreciated.
 - What counts as reasonable **margin of profit** is the margin of profit of the PSPs charging the lowest margins of profit representing collectively one fourth of the digital euros distributed across the euro area in a given year. The interpretation of the Presidency would be parallel than for the relevant costs.
- (ii) **fees requested for comparable digital means of payments.**
- What counts as fees are those fees applied by a representative group of PSPs providing comparable digital means of payment. As suggested in the previous WP, it may be better to specify what are the comparable digital means of payment for the purposes of setting a cap to the fees³. In case debit card transactions are considered as comparable, this limit for the inter-PSP fee would be similar to the caps contained in the Interchange Fee Regulation for debit cards.
 - According to the Commission, the intention is not to duplicate the cap of the Interchange Fee Regulation but to lower the fees fostering competition in the retail payment market. Therefore, other comparable means of payment need to be included in the calculation, including account to account payments.
 - An option could be to provide with a definition that comprises all payment instruments that may be used in a digital environment where the initiation of payment takes place at the point of interaction, where the user would see their deposit account immediately debited (on the contrary, payments made using credit cards, which include a broader range of services bundled with the payment service, would be excluded). This would include situations where credit transfers and direct debits are initiated at the point of interaction, but situations in which credit

³ Distinct to comparable digital means of payment for the purposes of the legal tender.

transfers and direct debits are not initiated at the point of interaction would continue to be excluded⁴.

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The limits to the MSC and the inter-PSP fee shall be uniform and applied in a non-discriminatory manner across the euro area.

According to articles 17.6-7, the funding/defunding and waterfall/reverse waterfall transactions shall not be subject to MSC or inter-PSP fee. The costs derived from these transactions should be included as relevant costs.

The MSC is the only charge per transaction that PSP can apply to merchants.

For the purposes of calculating the maximum limits to the fees, the PSPs shall provide all information necessary to the ECB (costs, margin of profits, fees of other payment instruments), according to the procedure and time limit set by the ECB. This reporting could be subject to external audit. The ECB would publish periodically the amounts resulting from the monitoring exercise.

Questions to MS:

- *Do MS agree that the provision of basic services should be free for natural persons, as specified in the Regulation?*
- *Do MS believe that the Regulation should enter into price regulation of the MSC and or the inter PSP fees at all? In case of a simple negative answer, the Presidency will interpret the following answers as a second-best preferred scenario for the Member State.*
- *Should we define “inter-PSP fee” in the Regulation (and how)? Should an eventual inter-PSP fee be capped? Is the situation similar to the four-party card market? Does a regulation of exclusively the MSC provide the right incentives to the actors in the market, preserving low costs for merchants?*
- *How should we deal with the fact that there may be some market segments where there is no MSC received by the PSPs (e.g., P2P segments)?*
- *How should the prices be capped when issuing the first digital euro, if no information on costs is available? By reference to comparable means of payments?*
- *On the methodology:*
 - *Are both references included in the proposal (costs and comparable means of payments) necessary to cap the fees?*
 - *What should be comparable means of payments for the purposes of limiting the fees?*
 - *How do MS assess the most-efficient cost test? Does it create the right incentives for PSP to be efficient and have low costs ensuring fair competition?*

⁴ For example: ‘comparable means of payment’ means payment instruments which may be used in a digital environment where the initiation takes place at the point of interaction, excluding credit cards.

Should the Regulation be more detailed in some definitions regarding the methodology of the ECB (e.g., relevant cost) (and how?)?

- *Do MS believe that there is any margin to simplify the procedure to cap the fees?*
- *Do MS consider that the ECB should be tasked with a price control competence (by establishing and publishing maximum fees) in the digital euro payments ecosystem?*

Agence Europe