

Council Working Party on Financial Services and the Banking Union

Regulation on the establishment of the digital euro



Presidency note 2 for the Council Working Party - 24 October **Discussion note on distribution**

1) Introduction

The Presidency introduces as new topics for discussion the distribution of the digital euro and, for the sake of coherence, the articles regarding the limits to the store of value function and the compensation model of the digital euro. The Presidency is aware of the importance of these issues for MS. That is why it has considered that, once the Working Party has set the scene by discussing the definitory chapters of the digital euro and once the proposal of the digital euro has been contextualised in the current EU payments ecosystem, it is time to tackle these relevant and characteristic issues, since they will need of a deep debate on the side of co-legislators. The input of the Commission, the ECB and the Council Legal Services would be specially appreciated to inform this debate. Oral and written comments by MS are welcome, in order to help the Presidency assess the degree of consensus for the following Working Parties.

2) Article 13: Payment service providers

Article 13 of the Regulation establishes some rules on how the payment service providers (PSP) should distribute the digital euro. Some MS have raised comments and questions about the structure of this article and possible ways for clarification and streamlining. In this part of the note we will explain the different provisions of the Article, as understood by the Presidency (further comments and clarifications by COM/ECB are appreciated), pointing out some improvements that could be made according to comments and feedback received by MS.

Article 13.1 establishes two basic legal provisions: (i) **PSPs** may provide digital euro payment services (from Annex I) and (ii) it also establishes who can be the **digital euro users** (letters a to e). For the sake of clarity, some MS have suggested that one new Article could be introduced to specify who can be the users of digital euros, while art. 13.1 can state the possibility (*may*) for PSPs to provide digital euro payment services.

Regarding the first provision, some MS wonder whether all PSPs (i.e., all kinds of payment institutions) should be allowed to provide all types of digital euro payment services. In this respect, the Commission is preparing a non-paper on the interlink between PSD and the digital euro that will contain a table comparing PSD2 and digital euro services and will enable to shed more light on these issues. However, preliminarily, the Commission has stated that the idea of the proposal is not that all PSPs can provide all the services. Depending on the type of PSP certain services might not be possible (for instance, account information service providers cannot provide account servicing services). The idea of the article is to convey that PSPs within the framework of PSD2 can provide the digital euro services without the need to get a new license.

Regarding the provision on the digital euro users, some MS would like to know the justification behind the limitation in time of the use of the digital euro for visitors and former residents. In this respect, the Commission explains that the text establishes objective criteria and that the intention of the limitation is to avoid an uncontrolled amount of digital euro in circulation for third countries and Member States whose currency is not the euro and to avoid a circumvention of the arrangements under Articles 18 and 19.

Article 13.2 establishes that PSPs that provide account servicing payment services (ASPSPs) shall enable digital euro users to **fund or defund** their digital euro accounts from bank deposits (or cash if the PSP provides cash services). If automatically, then the digital euro user can link the digital euro payment account to a single non-digital euro account, as stated in Article 13.4. Some MS have raised the question of whether this article should be interpreted as a general obligation for all ASPSPs or just for ASPSPs providing digital euro payment accounts to their clients.

The Commission considers that, since the funding and defunding is a digital euro payment service contained in Annex 1 (d), Article 13.2 states a general obligation to all ASPSPs to allow funding and defunding of digital euro accounts, irrespective of whether that ASPSP provides digital euro payment accounts to clients¹.

In connection with article 13.2, it could be useful to discuss the content of **recital 24**. Recital 24 discusses the case where a PSP wishes to provide digital euro accounts to users **but is not able to access payment systems** (for the purpose of settling transactions and accessing to the infrastructure for issuance and redemption of the digital euro). This would be the case for payment institutions (PI) and e-money institutions (EMI). In the context of the PSR review (and the Instant Payments Regulation), the amendments to the Settlement Finality Directive to allow access to these PSPs are being discussed. Independently from this option, a fair transmission of orders from PSPs without access to the payment system/ECB infrastructure through PSPs with access should be ensured to keep a level playing field. MS would welcome clarifications regarding this matter within the text.

In this respect, the Commission clarifies that the obligation for ASPSPs contained in article 13.2. to allow funding and defunding of digital euro accounts is irrespective of the ASPSP's ability to provide the liquidity source for those funds in central bank money, and that this can be seen in recital 24. This recital provides clarity on how a PI or an EMI account servicing payment service provider, which does not hold an account with the central bank (and therefore does not have access to reserves) is able to provide funding and defunding services to their clients. This would work in the following way: Upon the choice of the digital euro user to link his/her digital euro payment account held with that PI/EMI with a non-digital euro payment account, the concerned account servicing payment service provider (e.g. of the PI/EMI, or of the non-digital euro payment account of the digital euro user) that is allowed to hold an account at the central bank should provide the PI/EMI with access to payment systems, and similarly should pass through the settlement infrastructure the transfer orders of the PI/EMI in an objective, proportionate and non-discriminatory manner. This relates to Art 35 of PSD2 and will also be tackled in the non-paper that the Commission is preparing.

¹ For instance, a PSP would need to offer to their clients funding/defunding transactions from their bank deposits to a digital euro payment account with another PSP - that the digital euro user can set to happen either automatically or manually for pure funding/defunding transactions, or that happens automatically for the waterfall defunding or reverse waterfall funding linked to a payment transaction.

Article 13.3 complements art. 13.2 by specifying the **conditions of the funding and defunding** functionalities.

Article 13.4 establishes the obligation for ASPSPs to provide digital euro users with the **waterfall and reverse waterfall** mechanism. In this respect, the Commission has also clarified certain questions where MS asked for further explanation on the structure and functioning of this process:

The waterfall and reverse waterfall mechanism is not only contained as basic digital euro payment service in Annex II (f), but also within the digital euro payment services in Annex I (d).

Some MS asked what would happen when a user without a connecting bank account receives a digital euro payment over the holding limits. In that case, according to the Commission, the payment would be rejected and not be processed.

Also, some MS demanded further clarifications regarding the connection to waterfall bank accounts, for example on how should the relationship between the ASPSP and the digital euro PSP work in case the waterfall bank account is not within the same digital euro PSP. According to the Commission, the idea is that the user designates one single bank account to be linked with the digital euro account (as stated in article 13(4)). Then, PSPs would have to sort the relationship out through contracts. Elements in this regard could be clarified in detailed measures, rules and standards referred to in Article 5(2).

Article 13.5 establishes that the digital euro distributed by PSPs shall be convertible at par with scriptural money and e-money denominated in euro. Some MS are suggesting to introduce a definition of scriptural money in EU financial legislation to add clarity. In this regard, we should take into consideration that current payments services legal framework and the proposals PSD3 and PSR already include references to “scriptural money” without a definition.

Article 13.6 establishes that no **contractual relationships** can exist between the digital euro user and the central bank (only between users and PSPs). As suggested during the first point of our Working Party, based on the discussion in the September WP, the Presidency suggests complementing this article by adding a new paragraph stating the idea already mentioned in recital 9 and including “other similar proceedings” to avoid limitative effects. The additional paragraph would state: *In case a payment service provider providing digital euro payment services enters into insolvency or other similar proceedings, the digital euro holdings of digitaleuro users would not be affected.*

Some MS have also suggested that some reflection is needed on the liability regime for PSPs and/or the central bank, in case there is a damage to the user (in the processing, in the settlement...). The Presidency is aware that in the non-paper the Commission is preparing on the interlink between the PSD and the digital euro, this issue is being examined, and therefore would be looking forward to it.

Article 13.7 establishes that digital euro users can have **several accounts** with different PSPs. Many MS have expressed some degree of disagreement with this provision. Enabling different wallets increases choice for users and competition, but it adds significant technical complexity, especially when it comes to enforcing the holding limits respecting the privacy of the users. Several models can be followed: (i) allowing several accounts with several PSPs; (ii) allowing several accounts with one PSP; (iii) allowing one account with one PSP. As a possible way forward, some MS are suggesting that if legal persons have a zero holding limit (no need to check holding limits because all inflows automatically convert into bank deposits),

some degree of flexibility could be introduced for these actors. In this respect, proportionality should be ensured. The ECB is preparing a proportionality assessment to study this matter.

Article 13.8 obliges PSP to make available to the public, free of charge, accessible **information** about the specific features of digital euro payment services and the conditions of their distribution.

Questions to MS:

- *What are the MS general views on the distribution model of the digital euro by payment service providers? And more specifically:*
- *Should an article on “digital euro users” be separated from art. 13.1 of PSPs?*
- *Taking into account the explanations of the Commission, what are MS’ views on the “limitation in time” of the use of digital euro for visitors and former residents?*
- *Do MS agree with the approach of the Commission that the obligations in articles 13.2 and 13.4 (related to the obligations to provide (de)funding and waterfall services) should be generic obligations to all ASPSPs? If so, do MS believe that the wording of these articles should be modified to more clearly reflect this idea of the Commission? In that case, what do MS suggest as modification?*
- *Do MS believe it would be useful to introduce a definition of scriptural money even if PSD does not include such a definition? If so, what do MS think would be the benefits of that provision?*
- *What are MS views on specifying the liability regime of PSPs and central banks (subject to further understanding based on a forecoming COM non-paper? And on including the insolvency specification?*
- *How many accounts should a digital user be able to hold? What is the objective that should be prioritised in this respect? In other words, do MS believe multiple accounts impose an excessive burden for PSPs given the potential benefits on competition being therefore not proportionate? Do MS believe that a differentiation should be made among natural persons (that in principle have a positive holding limit) and legal persons (that in principle have a zero holding limit)?*
- *Do MS believe that article 13 together with recital 24, as the Commission has explained, provide sufficient clearance on the relationships between PSPs without access to payment systems (because they are not connected even if eventually they are allowed to) / or to the ECB infrastructure, and PSPs that facilitate those connections? Do they believe some provisions in the line PSD2 could be introduced?*

2) Article 14: access to digital euro in the euro area Member States

Under the heading of “Access to the digital euro in MS whose currency is the euro” Article 14 introduces two kinds of obligations: (i) mandatory distribution obligations and (ii) measures to ensure financial inclusion.

Mandatory distribution

Regarding mandatory distribution, article 14.1 establishes that credit institutions that provide payment services² have the obligation to provide basic digital euro payment services upon request of their clients, as long as they are natural persons residing in euro MS.

² In particular, enabling cash to be placed and withdrawn on/from a payment account; operating a payment account; execution of payment transactions.

In a complementary way, by referring to Chapter IV of the PAD, article 14.2 gives to natural persons residing in euro MS, that do not hold a non-digital euro account, the right to access a payment account with basic features. According to the Commission, this should be interpreted as a digital euro account with the services listed in Annex II but with specific features, for example: in the basic digital euro payment account, the basic services are to be offered for free, whereas these basic accounts under PAD can be offered for free or at reasonable fees; also in terms of distribution, the PAD would apply, so that it would be up for MS to select which credit institutions would have to grant this access right for customers.

We can classify agents in four categories: (i) natural persons that are clients of credit institutions; (ii) legal persons that are clients of credit institutions; (iii) natural persons without a bank account and (iv) legal persons without a bank account. Reading arts. 14.1 and 14.2 together, the Regulation grants a right to have a digital euro payment account in a credit institution to groups (i) and (iii). In parallel, an obligation for credit institutions to distribute digital euros to their clients natural persons (group i) or to unbanked natural persons (group iii).³ In the Presidency understanding, articles 14.1 and 14.2 would be a specific rule (a “shall provision”) from article 13.1 (a “may provision” containing the generic possibility for PSPs to provide services).

Some MS have shown interest in discussing the need to have a mandatory distribution of the digital euro. Other MS want to discuss the extent of the obligation (only credit institutions? Some credit institutions? All PSPs?). Some MS question the operationalization of article 14.1: Is the obligation to be prepared to distribute digital euros enforceable upon request of one client, or should a bank prepare beforehand?). According to the Commission, credit institutions referred to in Article 14(1) and credit institutions selected by MS under PAD, mentioned in Article 14(2), need to be prepared, if a client of the credit institution referred to in Article 14(1) or customers (under PAD) request it. Public entities designated by MS referred to in Article 14(3) would also need to be prepared.

Measures to foster financial inclusion

Article 14.3 imposes obligations to the public sector regarding financial inclusion. It states that MS shall designate either public bodies or post office giro institutions to (i) provide basic services to unbanked natural persons residing in euro MS and (ii) provide basic services and face-to-face support to persons with disabilities, limited skills or elderly. Some MS have raised questions on what is exactly the purpose of the first obligation, since according to art. 14.2, the unbanked population would derive a right to a digital euro account from PAD. According to the Commission, the idea of having also public entities providing these services derives from the potential desire of certain unbanked people not to have a payment account (neither a traditional nor a digital euro account) with a bank. In this case, this provision would allow these people to still have access to digital euros through these entities fostering financial inclusion.

Article 14.4 imposes obligations to the financial sector regarding financial inclusion (on top of providing basic accounts according to PAD). It obliges credit institutions and public bodies/post offices (not all PSPs) to provide inclusion support measures.

Articles 14.5 mandates AMLA and EBA to jointly issue Guidelines specifying the interaction between AML/CFT rules and the provision of basic services to vulnerable groups (including asylum seekers, individuals with no fixed address,...). In this respect, the Presidency is aware

³ This sum-up abstracts for one important fact: one client (natural or legal) of one credit institution does not have the right to open a digital euro account in another credit institution.

that the Commission has already asked EBA, with a clear mandate, to work on these aspects given “derisking practices”.

Questions to MS:

- *Do MS agree with the provisions on mandatory distribution of article 14? Should there be an obligation to distribute the basic digital euro payment services? For which PSPs? Should this obligation be unconditional or are there any cases in which the PSP merits to be discharged? And how should this obligation be enforced?*
- *Is the integration of the PAD and the Digital Euro Regulation correctly done? Should the clarifications of the Commission be included in the text? Are more clarifications needed to see how Chapter IV of PAD (except arts. 17 and 18) apply to digital euros?*
- *What are MS views on the role of public authorities/post offices in the distribution of the digital euro?*
- *Do MS have any other comment regarding inclusion aspects of the digital euro and/or the role of AMLA/EBA?*

3) Annexes I and II

Annex I lists the digital euro payment services and Annex II lists those digital euro payment services considered as basic. They serve two different purposes: the first one, to define what a digital payment service is and the second, to establish those services that should be provided for free.

From a formal point of view, some MS wonder why the list in Annex I is more generic than the list in Annex II, when basic services should be a subcategory of all services. List I also seems confusing at some points (e.g., what is the use of digital euros in letter (a) compared to the transfer of digital euros in letter (b)?). Also, some MS are wondering whether the list of digital euro payment services should be understood as contained within the PSD2 list of services (but denominated in digital euros instead of in funds).

From a material point of view, MS want to discuss the list of basic digital euro payment services, since they have two implications: they would need to be provided by all credit institutions (in principle, according to the proposal) and designated public bodies and they would need to be provided by free to natural persons.

The Presidency is aware that more details in this respect will be provided in the Commission non-paper on the interlink between PSD and digital euro.

Questions to MS:

- *How would MS design both lists of services (subject to further understanding based on the coming Commission non-paper)?*
- *What specific services should be regarded as basic? Should any basic service from the proposal list be removed? Should any other service be introduced?*