



OPINION OF THE EUROPEAN CENTRAL BANK

of 31 October 2023

on the digital euro

(CON/2023/34)

(C/2024/669)

Introduction and legal basis

On 11 September and 31 October 2023, the European Central Bank (ECB) received requests from the Council and the European Parliament, respectively, for an opinion on a proposal for a regulation on the establishment of the digital euro ⁽¹⁾ (hereinafter the 'proposed regulation'). On 11 and 18 September 2023, the ECB received requests from the Council and the European Parliament, respectively, for an opinion on a proposal for a regulation 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 ⁽²⁾ (hereinafter the 'proposed regulation on the provision of digital euro services outside the euro area', together with the proposed regulation, the 'proposed regulations').

The ECB's competence to deliver an opinion on the proposed regulation is based on Article 133 of the Treaty on the Functioning of the European Union, which provides that, without prejudice to the powers of the ECB, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall lay down the measures necessary for the use of the euro as the single currency, and that such measures shall be adopted after consultation of the ECB. The ECB's competence to deliver an opinion on the proposed regulations is also based on Articles 127(4), first indent, and 282(5) of the Treaty on the Functioning of the European Union (TFEU), as the proposed regulations contain provisions relating to: (1) the primary objective of the European System of Central Banks (ESCB) to maintain price stability pursuant to Article 127(1) TFEU; (2) the basic task of the ESCB to define and implement monetary policy pursuant to Article 127(2), first indent, TFEU; (3) the basic task of the ESCB to promote the smooth operation of payment systems pursuant to Article 127(2), fourth indent, TFEU; (4) the ECB's exclusive right to authorise the issue of euro banknotes within the Union pursuant to Article 128(1) TFEU; and (5) the task of the ESCB to contribute to the smooth conduct of policies pursued by the competent authorities relating to the stability of the financial system pursuant to Article 127(5) TFEU. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the ECB, the Governing Council has adopted this opinion.

General observations

1. *A digital euro that acts as a monetary anchor and benefits people in the digital age*

- 1.1. The ECB strongly welcomes the proposed regulations' goal of establishing a framework facilitating the possible introduction of a digital euro that would ensure that central bank money continues to play a key role, side by side with commercial bank money payments, in maintaining a well-functioning payment system and financial stability, and ultimately trust in the euro currency: the 'monetary anchor' role of central bank money.
- 1.2. To preserve the singleness of the euro and the effectiveness of monetary policy, and thus to enable the ECB to achieve its primary objective of maintaining price stability ⁽³⁾, the euro needs to continue to fulfil all functions of money as a unit of account, means of exchange and store of value. Making central bank money available to the public not just in physical form, through cash, but also in digital form, will allow central bank money to continue

⁽¹⁾ COM(2023) 369 final.

⁽²⁾ COM(2023) 368 final.

⁽³⁾ See Articles 127(1) and 282(2) TFEU.

to play its role as a monetary anchor ⁽⁴⁾ and as an efficient means of payment, in a context where people increasingly choose to pay electronically, rather than in cash ⁽⁵⁾. Thus, the digital euro will contribute to underpinning the stability of the monetary and payment system and to preserving the integrity of the euro in all its forms. This, in turn, is a precondition for the continued effectiveness of the ECB's monetary policy, which is aimed at preserving price stability.

- 1.3. The proposed regulations are essential to ensure that central bank money, as a monetary anchor, evolves in response to changes in technology and payment behaviour that lead to an increase in digital payments, and hence to contribute to safeguarding the stability of the monetary system in a digitalised economy and society.
- 1.4. Making central bank money available in digital form for retail transactions would also have broader benefits, in particular by offering a universally accepted digital means of payment that can be used throughout the euro area for payments in shops, online and from person to person.
- 1.5. Furthermore, the digital euro would safeguard the strategic autonomy of the Union's payment ecosystem, while supporting competition and innovation in payments to the benefit of consumers and merchants alike. The digital euro would facilitate the development of payment solutions subject to European governance arrangements and provide a pan-European platform on which innovative services can be built. This would boost the efficiency of the European payment ecosystem as a whole, driving down costs, fostering innovation, and ensuring resilience against potential cyberattacks or technical disruptions such as power outages.

2. ***Ensuring that the digital euro meets the needs and expectations of Europeans***

- 2.1. For the monetary anchor to be effective, the digital euro would need to be in line with individual preferences. Everyone across the euro area should be able to use it for day-to-day payments: in shops, online, or from person to person ⁽⁶⁾. Thus, the ECB strongly welcomes the proposed legal tender status for the digital euro with mandatory acceptance. The ECB also strongly supports setting in Union legislation the right of individuals to obtain digital euro at the payment service provider (PSP) they currently hold an account with, without the need to change PSP to start using digital euro services.
- 2.2. For the same reason, the ECB welcomes that the proposed regulations aim to ensure that individuals can use basic digital euro services free of charge for basic day-to-day purposes. At the same time, the ECB supports setting in Union legislation the right economic incentives for private intermediaries that distribute the digital euro. Merchants receive a chargeable service from PSPs, but they would be placed in a weak position if the requirement imposed on them to accept the digital euro is not counterbalanced with a cap on the merchant service charge.

⁽⁴⁾ People's confidence in private money is underpinned by its convertibility on a one-to-one basis with the safest form of money in the economy, which is central bank money (the monetary anchor), and hence with other regulated forms of money. See Panetta, F., 'Central bank digital currencies: a monetary anchor for digital innovation', speech by Fabio Panetta, Member of the Executive Board of the ECB, at the Elcano Royal Institute, Madrid, 5 November 2021. Available on the ECB's website at www.ecb.europa.eu.

⁽⁵⁾ See 'Study on the payment attitudes of consumers in the euro area' (SPACE), ECB (2022), which shows that in terms of value of payments, cards (46 %) accounted for a higher share of transactions than cash payments (42 %). Available on the ECB's website at www.ecb.europa.eu.

⁽⁶⁾ See Panetta, F., 'A digital euro: widely available and easy to use', introductory statement by Fabio Panetta, Member of the Executive Board of the ECB, at the Committee on Economic and Monetary Affairs of the European Parliament, Brussels, 24 April 2023. Available on the ECB's website at www.ecb.europa.eu.

- 2.3. The ECB welcomes that the proposed regulation aims at ensuring a high degree of privacy and data protection for users of the digital euro, while minimising money laundering and terrorist financing risks ⁽⁷⁾. In any case, the Eurosystem must ensure that it cannot identify natural persons. For the offline model of the digital euro, the ECB welcomes that the envisaged level of privacy and data protection would be similar to cash. The ECB also welcomes that the proposed regulation includes explicit provisions to extend public support for less digitally sophisticated persons who may need personal assistance with digital euro transactions.

3. **Balancing institutional competences in the digital euro ecosystem**

- 3.1. The digital euro is a common European project. It is important that the proposed regulations take into due consideration the following three general principles.
- 3.2. First, in this common European project, the roles that the proposed regulations delineate for the Commission, the co-legislators, the national competent authorities (NCAs) and the Eurosystem in introducing and regulating the digital euro must reflect their respective Treaty competences. On the one hand, the Union's exclusive competence for the monetary policy of Member States whose currency is the euro under Article 3(1), point (c), TFEU entails a regulatory dimension intended to guarantee the status of the single currency ⁽⁸⁾, specifically the power of the legislator to lay down the measures necessary for the use of the euro as the single currency under Article 133 TFEU ⁽⁹⁾. The proposed regulation thus sets out such necessary measures for the use of the euro in its digital form and specifies the implications of its legal tender status. On the other hand, the powers set out under Article 133 TFEU are expressly stated to be without prejudice to the powers of the ECB. The proposed regulation reflects this primary law arrangement in providing that the Eurosystem may issue the digital euro 'in accordance with the Treaties' ⁽¹⁰⁾, i.e. based on the competence conferred upon the Eurosystem by Union primary law.
- 3.3. The ECB welcomes the recognition of its competence to issue the digital euro, and to authorise the issuance of the digital euro by national central banks (NCBs) of the Member States whose currency is the euro, exercising its powers under the Treaties. On the basis of such recognised competence, the ECB should be able to decide whether to authorise the issuance of the digital euro, including at what times, in what amounts, and other particular measures that are intrinsically connected to its issuance. Based on Article 133 TFEU, the co-legislators regulate the essential elements for the use of the digital euro, while the ECB decides whether and when to issue the digital euro, including what its intrinsic technical features should be. By way of analogy with banknotes, only the Eurosystem should be able to decide what a digital euro is, since it is a liability of the Eurosystem.
- 3.4. Second, the proposed regulations must respect central bank independence as enshrined in Article 130 TFEU in performing the tasks necessary for the introduction, regulation and oversight of the digital euro. Since it is for the Eurosystem to develop, design, issue and oversee the digital euro pursuant to its competences, these tasks should be carried out independently ⁽¹¹⁾, avoiding any instructions and constraints on the performance of any task ascribed to the Eurosystem by the Treaties.

⁽⁷⁾ In a public consultation conducted by the ECB in 2020, 43 % of respondents ranked privacy as the most important aspect of the digital euro (well ahead of other features) in order to maintain trust in payments in the digital age. Focus group participants also said they would appreciate options that gave them control over their personal data. See 'Eurosystem report on the public consultation on a digital euro', ECB, April 2021; and 'Study on New Digital Payment Methods', Kantar Public/ECB, 2022. Available on the ECB's website at www.ecb.europa.eu.

⁽⁸⁾ As recently upheld in the judgment of the Court of Justice of 26 January 2021 in *Hessischer Rundfunk*, C-422/19 and C-423/19, EU:C:2021:63 (hereinafter the 'judgment in Joined Cases C-422/19 and C-423/19'), paragraph 38.

⁽⁹⁾ See the judgment in Joined Cases C-422/19 and C-423/19, paragraph 42.

⁽¹⁰⁾ See Article 4(1) of the proposed regulation.

⁽¹¹⁾ See Article 130 TFEU.

- 3.5. Third, the principle of technological neutrality ⁽¹²⁾ suggests that the proposed regulations should take no stance on how the digital euro would fulfil user needs and as to the evolution of its functional and technical design features. The inclusion of provisions requiring or prohibiting specific designs or technical features might constrain any or all of the following aspects: the smooth functioning, evolution and demand for the digital euro, and the Eurosystem's ability to define and implement monetary policy independently. Legislation containing provisions on these issues might risk being unable to withstand technological developments in the fast-changing field of digitalisation of money and payment services.

Specific observations on the proposed regulation on the establishment of the digital euro

4. *Definitions*

- 4.1. The ECB proposes to amend the definition of comparable digital means of payment ⁽¹³⁾ to comprise 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 (payments made using credit cards, which include a broader range of services bundled with the payment service, are excluded). This would include situations where credit transfers and direct debits are initiated at the point of interaction, but situations in which credit transfers and direct debits are not initiated at the point of interaction would continue to be excluded (e.g. for 'recurring payments', direct debit appears to be the best comparable digital means of payment).
- 4.2. The ECB proposes to omit the use of 'account identifier' throughout the proposed regulation ⁽¹⁴⁾ and replace it with 'digital euro payment account number' ⁽¹⁵⁾, and where applicable, with 'user alias' ⁽¹⁶⁾.
- 4.3. Furthermore, the ECB proposes to amend the definition of 'user alias' ⁽¹⁷⁾ to further specify the meaning of the term, while providing a concrete example.

5. *Subject matter, establishment and issuance of the digital euro*

- 5.1. The proposed regulation aims, inter alia, to establish the digital euro as a central bank digital currency and to lay down rules concerning in particular its essential design features ⁽¹⁸⁾.
- 5.2. The euro, as the single currency, is established in the Treaty on European Union (TEU) ⁽¹⁹⁾. In this context, the ECB strongly welcomes that the proposed regulation recognises that the issuance competences of the ECB and the NCBs are anchored in the Treaties ⁽²⁰⁾. The 'establishment' of the digital euro should thus be understood as referring to the establishment of the essential legal requirements, i.e. those necessary for the use of this new form of the euro by the Eurosystem (distinct from crypto-assets and any other liability of private entities).

⁽¹²⁾ Technological neutrality is a guiding principle of Union legislation. See, for example, recital 9 of Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (OJ L 150, 9.6.2023, p. 40).

⁽¹³⁾ See Article 2, point (25), of the proposed regulation.

⁽¹⁴⁾ See recitals 67 and 74, and Article 2, point (26), and Article 31(1) of the proposed regulation.

⁽¹⁵⁾ In recital 67, Article 2, point (26), Article 31(1) and Annex V(i).

⁽¹⁶⁾ In recital 74.

⁽¹⁷⁾ See Article 2, point (28), of the proposed regulation.

⁽¹⁸⁾ See Article 1 of the proposed regulation.

⁽¹⁹⁾ See Article 3(4) TEU.

⁽²⁰⁾ See Article 4(1) of the proposed regulation, which provides that in accordance with the Treaties, the ECB shall have the exclusive right to authorise the issue of the digital euro, and the ECB and the NCBs may issue the digital euro.

6. **Legal nature of the digital euro**

- 6.1. The ECB takes note that the proposed regulation sets out the legal nature of the digital euro as a direct liability of a Eurosystem central bank towards digital euro users, while the contractual relationship for the provision of digital euro payment services is only between the PSPs distributing the digital euro and their clients. It is of crucial importance for maintaining the two-tiered monetary system, safeguarding financial stability and avoiding disintermediation of PSPs that PSPs remain fully responsible for the management of their relationships with their clients. In this respect, the ECB takes note that the proposed regulation clarifies ⁽²¹⁾ that no account or other contractual relationship exists between a Eurosystem central bank and a digital euro user.
- 6.2. Based on the content of paragraph 6.1, the ECB understands that users will be and remain the only owners, or holders, of property interests in the rights represented by digital euros, even though users will only be able to access and use their holdings through a PSP. In other words, the PSP provides payment services enabling the user to hold and transfer the digital euros provided, but the underlying funds are a liability of the central bank. PSPs remain responsible and liable for ensuring the safety of the payment services they provide, also in relation to the digital euro. The inclusion in the proposed regulation of a more specific provision that clearly stipulates these principles would be useful to avoid uncertainty in its national application in all euro area Member States.

7. **Framework applicable to the digital euro**

- 7.1. The proposed regulation provides that the digital euro is to be governed by the provisions of the proposed regulation and the Commission's delegated acts, and that within the framework of the proposed regulation the digital euro is also to be governed by the detailed measures, rules and standards that may be adopted by the ECB pursuant to its own competences under the Treaties ⁽²²⁾.
- 7.2. The ECB wishes to draw the Union legislator's attention to the fact that the ECB's detailed measures, rules and standards, which would govern the development, design and issue of the digital euro, insofar as they are adopted pursuant to the ECB's competences under the Treaties ⁽²³⁾, would not be constrained by an instrument of secondary law such as the proposed regulation. A specific mention of this regulation is therefore not appropriate and the chosen formulation could be misinterpreted as restricting the Eurosystem's independence when performing the tasks ascribed to it by the Treaties.
- 7.3. Consideration should be given to clarifying the definitions set out in the proposed regulation to make it clear that the definition of digital euro transactions is aligned with the definition of payment transactions under Directive (EU) 2015/2366 of the European Parliament and of the Council ⁽²⁴⁾. This would provide clarity in PSP licensing in the context of Directive (EU) 2015/2366 with regard to the applicable security protection and consumer protection rules.
- 7.4. Recital 66 should be amended to clarify that, due to the specificity of the digital euro settlement as provided for directly under the proposed regulation, Directive 98/26/EC of the European Parliament and of the Council ⁽²⁵⁾ is not applicable. This is notwithstanding any classification of risk by the Eurosystem in its oversight function in respect of the digital euro scheme and settlement digital euro infrastructure, given its importance for the payments system.

⁽²¹⁾ See recital 9 of the proposed regulation.

⁽²²⁾ See Article 5(1) and (2) of the proposed regulation.

⁽²³⁾ See Article 4(1) of the proposed regulation.

⁽²⁴⁾ See Article 2, point (5), of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

⁽²⁵⁾ Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998, p. 45).

8. **Legal tender status of the digital euro**

Legal tender status and territorial scope

- 8.1. The ECB strongly welcomes the establishment of common rules on the scope and effects of the legal tender status of the digital euro throughout the euro area. The definition of the elements of legal tender builds upon the solid foundations of earlier Commission reports on the legal tender of cash, and its non-binding acts to which the Eurosystem contributed ⁽²⁶⁾, and the relevant case-law of the Court of Justice of the European Union ⁽²⁷⁾.
- 8.2. The Court of Justice has clarified that the concept of legal tender mentioned in Article 128(1) TFEU is a concept of Union law that must be given an autonomous and uniform interpretation throughout the Union ⁽²⁸⁾. Article 133 TFEU empowers the Union legislature alone to specify the legal rules governing the status of legal tender accorded to banknotes and coins denominated in euro, insofar as that is necessary for the use of the euro as the single currency. Such exclusive competence precludes any competence on the part of the Member States to specify legal rules in this area, unless they have been empowered by the Union to do so or if it is necessary to do so in order to implement Union acts in national law ⁽²⁹⁾.
- 8.3. The proposed legal tender status of the digital euro is thus a key element in securing people's freedom of payment choice and the Union's monetary sovereignty. It ensures that people and businesses can benefit from the digital euro being widely accepted as a means of payment, thereby giving people a real choice to pay electronically with central bank money throughout the euro area. It also facilitates the emergence of pan-euro area payment solutions and allows a solid basis for the development of value added services.
- 8.4. Legal tender provisions also contribute to monetary sovereignty and the integrity of the euro by ensuring that the form of money that anchors the value of the euro as a currency (i.e. central bank money in euro cash or digital form) is widely usable throughout the euro area.
- 8.5. The ECB welcomes that legal tender status entails the requirement to accept the digital euro both online and offline, since this is necessary to enable the take-up of both models of the digital euro. The ECB further welcomes that the territorial scope of the legal tender of the digital euro appropriately takes into account the particularities of online and offline means of payment.
- 8.6. For digital euro users, always having the option to pay with the digital euro is a valued characteristic ⁽³⁰⁾: no one would be required to hold or to pay with the digital euro, but a person choosing to pay with digital euros would always be able to do so in all shops that accept digital payments (i.e. physical shops and e-commerce).
- 8.7. For merchants, the proposed legal tender provisions represent an opportunity to improve their bargaining power vis-à-vis international card schemes, provided a wide distribution network for the digital euro is ensured ⁽³¹⁾ and legislative safeguards are established to prevent abuses derived from mandatory acceptance ⁽³²⁾.

⁽²⁶⁾ Commission Recommendation 2010/191/EU of 22 March 2010 on the scope and effects of legal tender of euro banknotes and coins (OJ L 83, 30.3.2010, p. 70).

⁽²⁷⁾ See the judgment in Joined Cases C-422/19 and C-423/19.

⁽²⁸⁾ See judgment in Joined Cases C-422/19 and C-423/19, paragraph 45.

⁽²⁹⁾ See judgment in Joined Cases C-422/19 and C-423/19, paragraphs 50 to 52.

⁽³⁰⁾ See ECB, April 2021 and 'Study on New Digital Payment Methods', Kantar Public/ECB, 2022.

⁽³¹⁾ This is connected to Articles 13 and 14 of the proposed regulation (concerning distribution by PSPs).

⁽³²⁾ This is connected to Article 17 of the proposed regulation ('Fees on digital euro payment services').

- 8.8. Legal tender provisions provide PSPs with an opportunity to offer their clients digital euro payment services with the widest possible euro area reach, while obtaining comparable compensation to similar services with a national reach. This in turn reduces PSPs' current dependence on non-European payment solutions. The fact that the ECB must seek to enable, to the extent possible and where appropriate, that the use of private digital means of payment is carried out in accordance with the rules, standards and processes governing digital euro payment services ⁽³³⁾ should help to remove technical obstacles for local private solutions to also achieve pan-euro area reach.

Exceptions to the obligation to accept the digital euro, prohibition of unilateral exclusion of payments in the digital euro, and additional exceptions of a monetary law nature

- 8.9. The ECB welcomes the exceptions to the obligation to accept the digital euro ⁽³⁴⁾, as they appear proportionate and legitimate.
- 8.10. The ECB agrees that natural persons acting in the course of a purely personal or household activity may refuse payment in the digital euro, while microbusinesses may do so when they only accept cash. This corresponds in effect to a non-discrimination requirement, whereby any merchant already accepting digital means of payment must be ready to accept the digital euro if it is offered by a payer. This should, however, include payees under Article 9, point (a), of the proposed regulation. If this were not the case, this provision would allow such entities to conduct digital business in the euro area without adopting the digital euro.
- 8.11. The ECB fully supports the proposed prohibition of the unilateral exclusion of payments in the digital euro ⁽³⁵⁾, which ensures that providers of goods and services cannot prejudice people's option to pay with the digital euro, restricting the choice available to other digital means of payment they may own or support.

Interaction between the digital euro and euro banknotes and coins

- 8.12. The ECB welcomes the introduction of full fungibility at par between the digital euro and euro cash. Such full fungibility is a natural consequence of their shared legal tender status. The co-legislators need to ensure that this provision in the proposal for a regulation on the legal tender status of euro banknotes and coins ⁽³⁶⁾ remains aligned throughout the legislative process.

9. **Distribution of the digital euro**

Role of payment service providers

- 9.1. The ECB welcomes the provisions on the distribution of the digital euro by PSPs ⁽³⁷⁾, which lay down the specific tasks that a PSP must carry out for the euro to be used as a single currency across the Union. PSPs already have existing direct relationships with their clients and are thus best placed to be the direct counterparts for the individuals, merchants and businesses that would use the digital euro ⁽³⁸⁾.
- 9.2. The proposed regulation states that digital euro users may hold one or several digital euro payment accounts with the same or different PSPs ⁽³⁹⁾. The ECB invites the co-legislators to consider whether this is a necessary measure for the use of the digital euro that needs to be specified in the proposed regulation. In this respect, a design with multiple digital euro payment accounts would entail technical difficulties, especially as regards the interplay of these accounts with the management of a consolidated holding limit. It could be argued that the digital euro could

⁽³³⁾ See Article 26 of the proposed regulation.

⁽³⁴⁾ See Article 9 of the proposed regulation.

⁽³⁵⁾ See Article 10 of the proposed regulation.

⁽³⁶⁾ COM(2023) 364.

⁽³⁷⁾ See Article 13 of the proposed regulation.

⁽³⁸⁾ See Panetta, F., 'Building on our strengths: the role of the public and private sectors in the digital euro ecosystem', introductory statement by Fabio Panetta, Member of the Executive Board of the ECB, at the Committee on Economic and Monetary Affairs of the European Parliament, Brussels, 29 September 2022.

⁽³⁹⁾ See Article 13(7) of the proposed regulation.

be limited to a single account since it would be a free public service. The ECB understands that the provision concerning multiple accounts aims to avoid restrictions on fundamental freedoms, which can only be imposed where proportionate.

- 9.3. The ECB intends to conduct and share with the co-legislators an in-depth technical analysis of the interplay between multiple accounts and the management of an individual holding limit. The ECB further suggests two elements to be considered by the co-legislators regarding the proportionality of any restriction on the number of accounts. First, the freedom of PSPs to provide digital euro services would not be constrained by a limitation to one account per user. It would be easier to switch a digital euro payment account than a payment account today, since the International Bank Account Number (IBAN) is not portable. Second, the complexity for the user in managing a consolidated holding limit across multiple accounts may warrant applying a different approach at the launch of the digital euro, when people are not yet familiar with it.
- 9.4. The recitals of the proposed regulation would benefit from further clarity on the position of Union citizens in Northern Ireland and whether their access to digital euro would be subject to agreement with the United Kingdom authorities.
- 9.5. The proposed regulation stipulates that credit institutions that provide retail payment services are obliged to provide basic digital euro payment services upon their clients' request ⁽⁴⁰⁾. The ECB strongly welcomes this proposed requirement as it will support universal access to the digital euro ⁽⁴¹⁾, which will have public good characteristics, by natural persons residing or established in the Member States whose currency is the euro. People who are already banked should not be required to change PSP to obtain access to the digital euro ⁽⁴²⁾. Universal access to the digital euro by the general public in the euro area would complement the wide usability facilitated by the legal tender status of the digital euro. Merchants' readiness to accept digital euros as legal tender rests on the parallel obligation of relevant PSPs, including credit institutions, to make the digital euro available to their clients. In turn, these provisions will enable the digital euro to act as a monetary anchor in the digital age. Regulatory measures have always proven necessary to ensure private sector coordination in the field of payments across the euro area (e.g. the introduction of IBAN and single euro area payments, and the availability of instant payments).
- 9.6. However, it would be proportionate, and thus preferable, if the requirement to provide digital euros upon demand were extended to those PSPs in the euro area that offer retail payment instruments (i.e. those that offer the services set out in points (1), (2) or (3) of Annex I to Directive (EU) 2015/2366, thereby enabling the user to obtain an IBAN). This would (1) establish the principle that people who already have a payment account to make day-to-day payments do not need to change provider to obtain digital euros, irrespective of which PSP is already providing that payment account; and (2) ensure a level playing field for all entities entitled to offer the services set out in points (1), (2) or (3) of Annex I of Directive 2015/2366. In order to offer all these entities equal rights to influence the digital euro rulebook, it is proportionate that they are subject to the same obligations. By contrast, the proportionality of requiring credit institutions established in Member States outside the euro area to distribute digital euros may come under scrutiny if the vast majority of their existing clientele were unable to hold digital euros.

⁽⁴⁰⁾ See Article 14(1) of the proposed regulation.

⁽⁴¹⁾ See Panetta, F., 'A digital euro: widely available and easy to use', introductory statement at the Committee on Economic and Monetary Affairs of the European Parliament, 24 April 2023.

⁽⁴²⁾ If distribution were instead voluntary for intermediaries, people may face significant hurdles in obtaining digital euros. For example, they might be forced to open an account with a new intermediary if their own bank does not provide them with access to the digital euro. In such a situation, however, people may not understand why they should open another account and might not make the effort to obtain digital euros from another intermediary. Moreover, previous examples of pan-European payment initiatives demonstrate that ensuring that consumers have broad access to the relevant payment services throughout the euro area has, ultimately, always required the introduction of regulatory measures.

Basic digital euro payment services

- 9.7. The proposed regulation sets out the obligation of PSPs not to charge fees to natural persons residing or established in the Member States whose currency is the euro for the provision of basic digital euro payment services ⁽⁴³⁾. The ECB fully supports this approach, which reflects the nature of the digital euro as a public good and allows users to use it free of charge for basic day-to-day purposes. However, the proposed list enumerating basic digital euro payment services does not include automated funding and defunding ⁽⁴⁴⁾.
- 9.8. The ECB recommends expanding the list of basic services to include automated funding and defunding, because their exclusion would have a number of effects when PSPs choose to charge for this service. First, people would encounter unexpected charges ⁽⁴⁵⁾ associated with the presence of holding limits, which only the digital euro faces, and would not understand the need to pay for them. The level of charges applied would have the effect of steering them towards or away from a given payment method ⁽⁴⁶⁾. Focus groups show that the people most likely to use regular automated funding are those with the greatest need to keep their budget under control, since automated funding is the funding tool best suited for this purpose ⁽⁴⁷⁾. Second, fewer people would fund their digital euro payment account if they had to submit an explicit request to avoid fees every time they wished to do so. Facilitating regular funding of the digital euro is desirable in order to ensure the maintenance of financial stability by avoiding cliff effects ⁽⁴⁸⁾ and therefore also to ensure an orderly transmission of monetary policy.
- 9.9. The ECB suggests expanding the list of basic services to include the switching of a digital euro account from one PSP to another. The purpose of this is to ensure that a PSP that a consumer decides to cease using would be unable to charge a dissuasive 'exit fee' targeting the consumer's choice to switch their digital euro account to a new PSP. The ECB also suggests considering measures to ensure that the free funding and defunding of digital euro via cash does not result in a reduction of automated teller machine (ATM) services. Furthermore, dispute management services should also be included in the list of basic services, as they contribute to confidence in digital euro and therefore to its adoption and use.
- 9.10. To ensure that the list of digital euro services remains up to date and in line with market practices and users' needs over time, the ECB proposes that the co-legislator considers empowering the Commission to adopt a delegated act to add new basic digital euro payment services and to interpret the scope of existing services when needed.

Support to persons with disabilities, functional limitations or limited digital skills, and elderly persons

- 9.11. People living in the euro area nowadays have costless access to a safe and universally accepted means of payment in the form of cash, which is important for financial inclusion. This should also be true to the extent possible for digital, online and offline payments.

⁽⁴³⁾ See Article 17(1) of the proposed regulation.

⁽⁴⁴⁾ See Annex II, point (c), of the proposed regulation.

⁽⁴⁵⁾ Digital euro users would not reasonably expect to be charged for topping up a digital euro payment account (e.g. putting in EUR 1 000 at the start of each month), given that standing orders (e.g. to pay rent at the start of the month) are rarely charged for.

⁽⁴⁶⁾ See recital 10 of the Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 260/2012 and (EU) 2021/1230 as regards instant credit transfers in euro (COM(2022) 546 final).

⁽⁴⁷⁾ See 'Study on Digital Wallet Features', focus group report, Kantar, April 2023, available on the ECB's website at www.ecb.europa.eu.

⁽⁴⁸⁾ Automated funding and defunding promote a convenient experience for end users, which would support the uptake of the digital euro and its financial stability benefits, in particular since this functionality will be paired with well calibrated holding limits. If many users regularly hold some balance in digital euro, there is a lower financial stability impact if an event triggers digital euro users to increase their digital euro holdings, because the sudden impact on bank deposits will be lower.

- 9.12. As regards digital inclusion, the ECB welcomes that the proposed regulation envisages that dedicated authorities will provide basic digital payment services and digital inclusion support face-to-face in physical proximity also to persons with disabilities, functional limitations or limited digital skills, and elderly people. Feedback received by consumer associations indicates that face-to-face support in physical proximity is particularly valuable ⁽⁴⁹⁾.
- 9.13. Moreover, the ECB welcomes that digital inclusion is facilitated through the designation by Member States of specific authorities or post office giro institutions for those that do not hold or do not wish to hold a private payment account.
- 9.14. Furthermore, the proposed regulation entrusts the European Banking Authority and the Anti-Money Laundering Authority with the joint issuance of guidelines specifying the interaction between anti-money laundering and combating the financing of terrorism requirements and the provision of basic digital euro payment services, with a particular focus on financial inclusion of vulnerable groups, including asylum seekers or beneficiaries of international protection, individuals with no fixed address or third country nationals who are not granted a residence permit but whose expulsion is impossible for legal or factual reasons ⁽⁵⁰⁾. The ECB welcomes this, but underlines the risk that the joint guidelines, when issued, will only provide guidance to the NCAs and do not fully exclude the possibility of fragmented implementation. A provision establishing minimum criteria for the joint guidelines, would be more conducive to harmonisation across the euro area.

10. *Use of the digital euro as a store of value and as a means of payment – fees for digital euro payment services*

Principles and limits on the use of the digital euro to mitigate risks to the transmission of monetary policy and financial stability in the euro area ⁽⁵¹⁾

- 10.1. Today, depositors have the right to convert their sight deposits into cash at any point of time. However, practical obstacles to the holding of large amounts of cash exist, including the risk of loss or theft. To maintain an equilibrium between bank deposits and central bank money, in the context of declining cash usage and the availability of the digital euro, certain limits would need to be placed on the digital euro amounts that can be held by individuals.
- 10.2. The ECB has clearly communicated its intention to design and implement effective tools to control the maximum amount of digital euros in circulation ⁽⁵²⁾. It is accordingly suggested that explicit reference to the ECB's clear intentions in this respect should be included in recital 31 of the proposed regulation. Among these tools, the ECB has specifically emphasised its aim of establishing limits on the holdings of digital euro by natural and legal persons ⁽⁵³⁾. The absence of such limits could pose threats to the monetary policy stance and its transmission, and for financial stability in the euro area. Any undesirable consequences that may result from the issuance of digital euro for the monetary policy stance and transmission, as well as for financial stability, should be minimised in advance by design.

⁽⁴⁹⁾ See, for example, the response by the European Consumer Organisation (BEUC) to the written procedure following the ERPB technical session on digital euro of 12 May 2023, available on the ECB's website at www.ecb.europa.eu.

⁽⁵⁰⁾ See Article 14(1) of the proposed regulation.

⁽⁵¹⁾ See Article 15 of the proposed regulation.

⁽⁵²⁾ See Panetta, F., 'Shaping Europe's digital future: the path towards a digital euro', introductory statement by Fabio Panetta, Member of the Executive Board of the ECB, at the Committee on Economic and Monetary Affairs of the European Parliament, Brussels, 4 September 2023.

⁽⁵³⁾ See ECB (2022), 'Progress on the investigation phase of a digital euro', available on the ECB's website at www.ecb.europa.eu.

- 10.3. Whilst the calibration of holding limits would be the result of a complex economic assessment, their functional and technical implementation should prioritise a 'best in class' user experience and efficient implementation for all actors involved ⁽⁵⁴⁾. The decision on how to combine and calibrate any tools that control *ex ante* the amount of digital euros in circulation should be taken closer in time to the possible future introduction of the digital euro and be reviewed regularly, taking into account the respective economic and financial environment ⁽⁵⁵⁾.
- 10.4. On the one hand, the proposed regulation suggests that the possibility of establishing limits on holdings is an optional feature of the use of the digital euro, providing where relevant that the use of the digital euro as a store of value *may* be subject to limits ⁽⁵⁶⁾. On the other hand, the proposed regulation also imposes upon the ECB the obligation to develop instruments to limit the use of the digital euro as a store of value ⁽⁵⁷⁾. Furthermore, the proposed regulation sets out a list of compulsory conditions for these instruments ⁽⁵⁸⁾. Financial stability features as the primary objective in this list, to the detriment of the definition and implementation of monetary policy, which is the main task to be carried out through the ESCB in pursuance to its primary objective of maintaining price stability, and also to the detriment of enabling natural and legal persons to access and use digital euro.
- 10.5. The ECB welcomes the recognition of its competence to establish limits on the use of the digital euro as a store of value and to calibrate them over time ⁽⁵⁹⁾. The ECB is resolved to apply and maintain holding limits, as a cornerstone of the design of the digital euro. Indeed, the ECB has the competence to decide on the amount of digital euros to be issued, since it impacts the size of the Eurosystem's balance sheet and the implementation of its monetary policy. Establishing and calibrating individual holding limits results in capping the overall amount of digital euros that may be issued and is to be done by the Eurosystem pursuant to its competences under the Treaties, and not as a result of an obligation under the proposed regulation.
- 10.6. With regard to the proposed list of compulsory conditions referred to in paragraph 10.4, the ECB agrees with the three objectives to be pursued when calibrating holding limits, but notes that giving primacy to one of them (financial stability) may be viewed as restricting an existing core task (the definition and implementation of monetary policy) by stipulating parameters for the ECB's action, diverging from the ECB's primary mandate of price stability under the Treaty. Since the definition and implementation of monetary policy is in any case facilitated by safeguarding financial stability, the ECB does not contemplate any friction between these two tasks in setting the holding limits.
- 10.7. The proposed regulation provides that the digital euro will not bear interest within the framework of the proposed regulation ⁽⁶⁰⁾. It cannot be stated firmly enough that the ECB is not developing a remunerated digital euro. Indeed, as is the case for euro banknotes, the ECB does not intend to remunerate the digital euro, either at its launch or for the foreseeable future. Banknotes have never been remunerated, because it is impractical to do so, although such remuneration is neither theoretically impossible nor expressly prohibited by law. Given its mandate to maintain price stability and the concomitant basic task of defining and implementing the monetary policy of the euro area, the ECB cannot exclude future scenarios where remuneration of the digital euro might be warranted. Also, to further its monetary policy mandate, the ECB must remain in control of the remuneration of all liabilities on its

⁽⁵⁴⁾ See also Panetta, F., 'The digital euro and the evolution of the financial system', introductory statement by Fabio Panetta, Member of the Executive Board of the ECB, at the Committee on Economic and Monetary Affairs of the European Parliament, 15 June 2022. Available on the ECB's website at www.ecb.europa.eu.

⁽⁵⁵⁾ See Panetta, F., 'The digital euro and the evolution of the financial system', introductory statement at the Committee on Economic and Monetary Affairs of the European Parliament, Brussels, 15 June 2022.

⁽⁵⁶⁾ See Article 15(1) of the proposed regulation.

⁽⁵⁷⁾ See Article 16(1) of the proposed regulation.

⁽⁵⁸⁾ See Article 16(2) of the proposed regulation.

⁽⁵⁹⁾ See Article 16(1) of the proposed regulation.

⁽⁶⁰⁾ See Article 16(8) of the proposed regulation.

balance sheet. Even if this provision were to be interpreted as an outright exclusion of remuneration, this could not, in any event, restrict the Eurosystem's primary law competence to independently define and implement the monetary policy of the euro area, as the powers set out under Article 133 TFEU are expressly stated to be without prejudice to the powers of the ECB. For this reason, an amendment is proposed to clarify the primacy of the ECB's mandate to maintain price stability and the concomitant basic task of defining and conducting the monetary policy of the euro area.

Fees on digital euro payment services ⁽⁶¹⁾

- 10.8. The ECB welcomes the compensation model envisaged by the proposed regulation, which seeks to establish a balance whereby (1) the digital euro would be free for basic use; (2) PSPs have adequate incentives for the distribution of the digital euro to ensure wide accessibility; and (3) merchants have adequate safeguards to avoid excessive charges being applied to them. Merchants would receive a chargeable service from PSPs but would be placed in a weak position if the requirement placed on them to accept the digital euro is not counterbalanced with a cap on the merchant service charge. In turn, an explicit recognition of inter-PSP fees would enable distributing PSPs to obtain comparable revenues to those earned in the distribution of comparable payment instruments, stimulating active distribution of digital euros and high-quality service levels for end users. The ECB welcomes the principle that fees and charges should not be higher than those requested for comparable (private) digital means of payment, also in view of the need to preserve the effective use of the digital euro as legal tender. By the same token, the ECB welcomes the prohibition on PSPs charging natural persons fees for basic digital euro payment services ⁽⁶²⁾ and the prohibition on surcharges on the payment of debt using the digital euro ⁽⁶³⁾.
- 10.9. Moreover, regulation of fee levels in respect of digital euro payment services should not be limited to the private sector but should also apply to the public sector. In this regard, the relevant provisions should refer both to merchants and to public sector entities accepting digital euros. The ECB also welcomes recital 41 of the proposed regulation, which indicates the Eurosystem's intention to bear its own costs, as is the case in respect of the production and issuance of banknotes. PSPs would have their own costs related to the distribution of the digital euro services they provide, but would not be charged by the Eurosystem, which reflects the public good nature of the digital euro and follows a similar logic to cash.
- 10.10. The proposed regulation establishes that the merchant service charge will be the only charge per transaction that PSPs may apply to merchants ⁽⁶⁴⁾. The ECB welcomes this, since it is necessary to make caps effective. However, this objective will not be achieved if flat fees can be charged without any restriction. If the same payment terminal can be used for payments in the digital euro and in other payment forms, which is an objective that the ECB will seek to achieve, the ECB recommends excluding further flat fees that would apply only in respect of the acceptance of the digital euro. Flat fees applicable to overall payment acceptance services, such as the provision of a payment terminal, may continue to apply without restrictions.
- 10.11. The proposed regulation imposes upon the ECB the obligation to regularly monitor the information that is relevant for the purposes of the charges and fees discussed above and publish periodically the amounts resulting from that monitoring with an explanatory report ⁽⁶⁵⁾. The ECB understands that reporting activity carried out in respect of the amounts established in the proposed regulation would not entail the publication of individual PSPs' costs, fees and charges and that these amounts should not be inferable from this reporting exercise. The ECB also underlines the necessity for robust enforcement mechanisms in respect of obligations imposed on PSPs to report to the competent authority, particularly in cases where PSPs decline to fulfil their reporting duties. The ECB suggests that, for the sake of legal clarity, these aspects should be further clarified in the proposed regulation.

⁽⁶¹⁾ See Article 17 of the proposed regulation.

⁽⁶²⁾ See Article 17(1) of the proposed regulation.

⁽⁶³⁾ See Article 7(4) of the proposed regulation.

⁽⁶⁴⁾ See Article 17(6) of the proposed regulation.

⁽⁶⁵⁾ See Article 17(3) of the proposed regulation.

- 10.12. The proposed regulation also obliges the ECB to develop a methodology for the calculation of the amounts and establishes parameters to that end ⁽⁶⁶⁾. The proposed regulation seeks to reduce the competent authority's discretion in establishing the fee amounts by specifying the relevant parameters to apply. However, this objective is not fully achieved, as some of the relevant parameters, such as a 'reasonable margin of profit' and the 'most cost-efficient payment service providers', are subjective notions whose interpretation depends on accounting rules, business strategies among different PSPs, different business models and areas of operation. The ECB thus suggests further clarifying these parameters in the proposed regulation or in the proposed methodology.
- 10.13. In particular, the ECB welcomes that the 'most cost-efficient payment service providers' are used as a reference. This seeks to avoid situations in Member States where PSPs are particularly efficient in the provision of payment services in which merchants may face higher costs for the acceptance of digital euro as a result of caps being calculated using euro area averages. The share that is to be taken by the 'most cost-efficient' PSPs is therefore an essential element for the proposed regulation to establish. However, the proposed regulation specifies this share for one of the factors that may determine the pricing cap (relevant costs incurred by PSPs for the provision of digital euro payments, including a reasonable margin of profit), but not for the other factor (fees or charges requested for comparable digital means of payment). The ECB recommends applying the share proposed in the first case ('most cost-efficient payment service providers representing collectively one fourth of digital euro distributed across the euro area in a given year') also in the second case.
- 10.14. Within the framework of the Treaties, both the substantive and the formal responsibility to regulate fees lies with the legislators, and not with the ECB. In order to avoid fragmentation of the internal market and significant distortions of competition through divergent laws and administrative decisions, the legislators have in the past exercised this power to take measures to address the problem of high and divergent interchange fees to allow PSPs to provide their services on a cross-border basis and to allow consumers and merchants to use cross-border services ⁽⁶⁷⁾.
- 10.15. The ECB stands ready to provide its technical support and expertise in the calculation of the relevant amounts. It lacks, however, the legal competence to determine caps and fees, as a consequence of which publication of the amounts by the ECB should not be *de jure* equivalent to determination of the fees. Otherwise, such ECB actions may be challenged and subject to judicial scrutiny by means of an action for annulment.
- 10.16. The ECB stands ready to assist the co-legislators to exercise their competence through a consultative and technical role, or to assist the Commission if this role is delegated to it. In particular, the ECB stands ready to (1) provide the necessary technical assistance in the development of the methodology to calculate the amounts, (2) regularly monitor developments, and (3) publish the data necessary for the setting of the caps. However, the final setting of these amounts and the adoption of the methodology should lie with the co-legislators, or the Commission if this role is delegated to it.
- 10.17. The ECB welcomes that the proposed regulation establishes a clear responsibility for NCAs to enforce PSPs' compliance with their obligations not to apply fees at all for the basic digital euro payment services provided to natural persons, and to apply fees to merchants within the limits stipulated in the proposed regulation ⁽⁶⁸⁾. A well-functioning enforcement regime is essential to protect payment service users and promote fair competition.

⁽⁶⁶⁾ See Article 17(5) of the proposed regulation.

⁽⁶⁷⁾ See recital 13 of Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions (OJ L 123, 19.5.2015, p. 1); Article 8 of Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 (OJ L 94, 30.3.2012, p. 22); and Article 3 of Regulation (EU) 2021/1230 of the European Parliament and of the Council of 14 July 2021 on cross-border payments in the Union (OJ L 274, 30.7.2021, p. 20).

⁽⁶⁸⁾ See Article 17 of the proposed regulation.

11. *Conditions for the distribution of the digital euro outside the euro area*

- 11.1. The ECB welcomes that the proposed regulation makes the digital euro initially accessible to persons established or residing in the euro area. This is aligned with the Eurosystem's proposal to focus its initial releases of the digital euro on euro area residents, merchants and governments. The ECB agrees that access for visitors together with access for consumers and merchants in the European Economic Area and selected third countries could be part of subsequent releases ⁽⁶⁹⁾. The digital euro first needs to be introduced first to persons established or residing in the euro area before being gradually rolled out to others. This initial introduction of the digital euro, and its related usage, creates a basis for the digital euro to be subsequently used by persons established or residing outside the euro area.
- 11.2. The ECB invites the co-legislators to further elaborate on the concept of a visitor to clarify that a temporary stay in the euro area by a resident in a non-euro area Member State or a third country cannot result in permanent access to the digital euro, since this would circumvent the principles reflected in the proposed regulation concerning the need for a prior agreement before the digital euro is widely accessible in such non-euro area Member State or third country ⁽⁷⁰⁾.

Distribution of the digital euro to natural and legal persons residing or established in Member States whose currency is not the euro and to natural and legal persons residing or established in third countries

- 11.3. The ECB welcomes that the proposed regulation recognises the pivotal importance of an agreement between the Eurosystem and a non-euro area central bank for the operationalisation of the digital euro for natural and legal persons residing or established in Member States whose currency is not the euro. However, the ECB invites the co-legislators to specify the difference between the agreement signed by the ECB and the NCB of the Member State concerned and any operational arrangements needed to ensure that the NCB concerned abides by any rules, guidelines, instructions or requests issued by the ECB and provides all information that the ECB may require. The ECB further supports the imposition of an obligation under national law on NCBs and PSPs of non-euro area Member States to provide information to the ECB and abide by its instructions, especially as regards the imposition of holding limits ⁽⁷¹⁾.
- 11.4. The ECB would favour the addition of two elements to the provision governing the negotiation and conclusion of international agreements between the Union and third countries for the distribution of the digital euro to natural and legal persons residing or established in third countries.
- 11.5. First, it should be clearly spelled out that the conclusion of a high level, principled agreement between the Council and a third country should be supplemented by an operational agreement between the Eurosystem and the central bank of that third country. The operational capacity of the third country central bank and its ability to comply with the Eurosystem's requirements should be verified in practice, and no distribution of the digital euro should be allowed to commence prior to such verification.
- 11.6. Second, there ought to be an element of verification by the Union in relation to the third country to ensure that intermediaries established or operating in the third country that distribute the digital euro are subject to supervisory and regulatory requirements that are at least equivalent to those applied to PSPs established in the Union. An equivalence decision in the form of a delegated act by the Commission would be appropriate to safeguard the integrity of the digital euro when it is distributed outside the Union.

⁽⁶⁹⁾ See ECB (2023), 'Progress on the investigation phase of a digital euro – third report', available on the ECB's website at www.ecb.europa.eu.

⁽⁷⁰⁾ See Articles 18(1) and 19(1) of the proposed regulation.

⁽⁷¹⁾ See Article 16 of the proposed regulation.

Distribution of the digital euro to natural and legal persons residing or established in third countries or territories under a monetary agreement with the Union

11.7. Similarly as regards the distribution of the digital euro to natural and legal persons residing or established in Member States whose currency is not the euro or in third countries, the ECB wishes to stress the pivotal importance of concluding an agreement between the Eurosystem and the central bank or monetary authority of a third country or territory under a monetary agreement with the Union for the distribution of the digital euro to natural and legal persons residing or established in such third countries or territories, as a precondition for its distribution.

12. **Cross-currency payments**

12.1. The ECB supports the proposal that cross-currency payments ⁽⁷²⁾ between the digital euro and other central bank digital currencies of Member States outside the euro area or of third countries should be subject to prior agreements between, on the one hand, the ECB and, on the other hand, the NCBs of the Member States whose currency is not the euro and of third countries ⁽⁷³⁾. The Eurosystem envisages supporting the provision of cross-currency functionalities and is investigating approaches that could support the provision of cross-currency functionalities where there are mutual interests with other jurisdictions or currency areas ⁽⁷⁴⁾.

12.2. The ECB considers the relevant provisions of the proposed regulation on cross-currency payments and on cooperation with central banks of non-euro area Member States to enable interoperable payments ⁽⁷⁵⁾ to be of a declaratory nature, since the ECB already exercises this competence under primary law ⁽⁷⁶⁾. This provision may thus benefit from a reference to the ECB's competence under the Treaties, given that the Eurosystem already has a primary law competence to enter into such agreements and stipulate their content and to participate in international arrangements to enable interoperable payments.

13. **Online and offline use of the digital euro**

13.1. The ECB is committed to enabling two payment models for the digital euro: 'online' ⁽⁷⁷⁾ and 'offline'. The latter is designed to maximise certain cash-like characteristics ⁽⁷⁸⁾. The ECB thus agrees that having both models of the digital euro, as envisaged in the proposed regulation, comes with discrete advantages in terms of adaptability to diverse user preferences. While the online digital euro model makes central bank money available where payments with cash are not possible, the offline digital euro model can support increased availability, including in emergency situations (e.g. when network connectivity is unavailable or during an electricity grid malfunction). The ECB welcomes that an offline digital euro model would substantially resemble cash, in particular for low-value daily life transactions, in the way it is transferred and in the higher level of privacy and data protection guaranteed to payment users, while maintaining the possibility to safeguard the security and integrity of the digital euro. The offline digital euro model would ensure that not all transactions are necessarily validated by a third party, thereby meeting the data protection requirements of proportionality and necessity.

⁽⁷²⁾ Cross-currency retail payments are transactions between the payer and payee that include a cross-currency conversion as part of the payments chain. This would serve, for instance, cases of retail international trade and remittances.

⁽⁷³⁾ See Article 23 of the proposed regulation.

⁽⁷⁴⁾ See ECB (2023), 'Progress on the investigation phase of a digital euro – third report'.

⁽⁷⁵⁾ See Article 21(2) of the proposed regulation.

⁽⁷⁶⁾ See Article 23 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB').

⁽⁷⁷⁾ An online model would enable the use of central bank money (1) for payments made at a distance (the volume of which is growing with increasing digitalisation), (2) to ensure coverage of all use cases in most payment situations, and (3) by individuals without having to depend only on a bearer instrument (which may be lost or stolen) in order to be able to hold central bank money.

⁽⁷⁸⁾ An offline model would be a bearer payment instrument that does not depend on an online connection but is limited to proximity payments and the need to pre-fund it; hence a similar level of privacy as applies where cash is used could be enabled for payments.

- 13.2. The proposed regulation requires both online and offline digital euro payment transactions to be available on the first issuance of the digital euro ⁽⁷⁹⁾. At the same time, further testing by the Eurosystem will be necessary to guarantee that all relevant digital euro models offer sufficient security and maturity.
- 13.3. The ECB is committed to delivering both the online and offline digital euro models as from the first issuance of the digital euro ⁽⁸⁰⁾, and the rollout approach intended by the ECB already envisages this. At the same time, enshrining the ECB's intent in a legally binding provision will constrain its capacity to react to the higher level of uncertainty that the offline digital euro model involves, as well as to react to exceptional circumstances necessitating an imminent issuance of any available model. If trade-offs that have not yet been identified arise, postponing the overall issuance of the digital euro would be the only option available to the ECB.
- 13.4. For these reasons, the ECB invites the co-legislators to consider the imposition of a requirement upon the ECB to deliver both online and offline versions of the digital euro, coupled with a 'best efforts' provision under which the ECB would make available both online and offline models as of the first issuance of the digital euro. Under any circumstances, the ECB will inform the European Parliament, the Council and the Commission, as well as market participants and the public, in a timely manner, of any technical factors hindering the simultaneous rollout of the online and offline models, as well as of any exceptional circumstances necessitating an imminent issuance of the digital euro. The ECB proposes that this content should also be reflected in an amendment to recital 34 of the proposed regulation.

14. ***Conditional payments and programmable money***

- 14.1. The proposed regulation prohibits the issuance of the digital euro as programmable money, which is defined as units of digital money with an intrinsic logic that limits each unit's full fungibility ⁽⁸¹⁾. This provision is fully in line with what the ECB has already publicly confirmed on various occasions ⁽⁸²⁾: that the digital euro would *never* be programmable money. The existence of any limitation on where, when or who payment users can pay using the digital euro would render it tantamount to a voucher. This would be inconsistent with its legal tender status, in particular, its acceptance at full face value ⁽⁸³⁾, and would mean that it would be fungible neither with other units of digital euro, nor with euro banknotes and coins at par ⁽⁸⁴⁾. The ECB does not have a mandate to issue vouchers. Hence, even if no such limitation were to be included in secondary law, the issuance of programmable money by the ECB would be incompatible with the Treaties. The ECB would thus welcome the introduction of wording in the recitals and articles of the proposed regulation to the effect that the prohibition on issuing programmable money is anchored in the Treaties.

Conditional payments

- 14.2. The ECB welcomes that the proposed regulation envisages the possibility for PSPs to provide value added services such as conditional payments, i.e. payments automatically triggered by the fulfilment of a condition ⁽⁸⁵⁾. While PSPs are best placed to develop conditional payment services, the Eurosystem intends to support the provision of

⁽⁷⁹⁾ See Article 23(1) of the proposed regulation.

⁽⁸⁰⁾ See ECB (2023), 'Progress on the investigation phase of a digital euro – fourth report', available on the ECB's website at www.ecb.europa.eu.

⁽⁸¹⁾ See Article 24(2) of the proposed regulation.

⁽⁸²⁾ See, for example, Panetta, F., 'The digital euro: our money wherever, whenever we need it', introductory statement by Fabio Panetta, Member of the Executive Board of the ECB, at the Committee on Economic and Monetary Affairs of the European Parliament, 23 January 2023. Available on the ECB's website at www.ecb.europa.eu.

⁽⁸³⁾ See Article 7(2) of the proposed regulation.

⁽⁸⁴⁾ See Article 12(2) of the proposed regulation.

⁽⁸⁵⁾ See ECB (2023), 'Progress on the investigation phase of a digital euro – third report'.

conditional payments by the market by developing common scheme standards via the digital euro scheme rulebook (if requested by the market) and by providing additional settlement functionalities in the digital euro back-end infrastructure ⁽⁸⁶⁾.

15. **Distribution**

Interoperability requirement ⁽⁸⁷⁾

15.1. The ECB welcomes the reference to the interoperability of standards governing digital euro payment services with relevant standards governing private digital means of payment. The ECB intends to reuse current standards to the greatest extent possible in order to reduce adaptation costs, noting that competing payment solutions may apply different standards in the payment acceptance area and follow different user journeys. Such decisions therefore need to be supported by the widest possible market consensus on the supply and demand side, as well as the ECB's decision-making capacity when full consensus is not possible. Work has already been initiated to this end. The ECB intends to ensure as far as possible and appropriate that private and/or local means of payment can use digital euro standards, rules and processes (i.e., as discussed in paragraph 10.10, make it possible for one payment terminal to provide for all means of payment) to expand their reach.

Front-end services to access and use the digital euro

15.2. The ECB welcomes that the proposed regulation addresses users' preferences by allowing digital euro users to access and use digital euro payment services via front-end services developed by either PSPs or the ECB ⁽⁸⁸⁾. This means that the user always has the option to use a standard digital euro payment initiation interface, allowing for a fully harmonised, common payment experience across the euro area and preventing issues concerning merchant recognition and acceptance of the digital euro. In addition, front-end services developed by the ECB will significantly reduce the development burden for PSPs that choose solely to use the ECB service, greatly benefiting smaller PSPs that may not have the experience or resources necessary to develop a front-end service to initiate digital euro payments.

15.3. The ECB welcomes that the proposed regulation requires PSPs distributing the digital euro to ensure that digital euro payment services use the official digital euro logo, and that digital euro payment accounts can be quickly and easily accessed and used by digital euro users ⁽⁸⁹⁾. It is necessary that the payer and payee are aware of the chosen payment method and can easily access it. When this payment method is central bank money (cash or digital euro), it supports the ability of central bank money to act as a monetary anchor: people experience the convertibility of bank deposits into central bank money more frequently and are reassured that one euro is one euro in either case.

Switching of digital euro payment accounts

15.4. The ECB welcomes the provisions of the proposed regulation that facilitate easy switching of digital euro payment accounts ⁽⁹⁰⁾, which will address users' preferences and support the resilience of the digital euro ecosystem ⁽⁹¹⁾. These measures also include the user's ability to switch their digital euro payment account to another PSP in exceptional circumstances. Users would always maintain access to their digital euro holdings also, for example, when a PSP is unavailable for a prolonged period of time or has lost the relevant data.

⁽⁸⁶⁾ Notably a 'reservation of funds' functionality, which would be necessary for the safe provision of some conditional payment services to end users, and is a supporting feature of multiple potentially conditional payment use cases such as payment versus delivery and pay-per-use.

⁽⁸⁷⁾ See Article 26 of the proposed regulation.

⁽⁸⁸⁾ See Article 28(1) of the proposed regulation.

⁽⁸⁹⁾ See Article 28(3) of the proposed regulation.

⁽⁹⁰⁾ See Article 31 of the proposed regulation.

⁽⁹¹⁾ See paragraphs 8.2 and 8.3 of the Opinion.

General fraud detection and prevention mechanism

15.5. The ECB welcomes the provisions of the proposed regulation that facilitate a general fraud detection and prevention mechanism for online digital euro transactions to ensure the smooth and efficient functioning of the digital euro ⁽⁹²⁾. The ECB proposes to explicitly clarify that securing payment information is an integral part of the general fraud detection and prevention mechanism. Securing payment information (e.g. digital euro account number), when this information is exchanged between payment initiation and payment acceptance devices, is necessary to protect digital euro users against the risk of fraud and cyber-attacks, by means of, for instance, substituting payment information with a surrogate value.

16. Data protection and privacy

16.1. The ECB welcomes the high standard of privacy and data protection provided for under the proposed regulation ⁽⁹³⁾, which is crucial to ensure trust in the future digital euro and, in particular, the clear allocation of data protection responsibilities ('controllership').

16.2. The ECB also welcomes the allocation to either the ECB or to providers of support services of data processing that is not related to core tasks of the ECB, but which needs to happen across intermediaries to ensure the security of the personal data of digital euro users ⁽⁹⁴⁾. The clear allocation of the controllership role ⁽⁹⁵⁾ to the ECB (and, where relevant, the NCBs) or a support service operator, in line with the strict regulatory provisions included in the proposed regulation, ensures that digital euro users will always know where to exercise their data subjects' rights (e.g. right of access) in relation to their personal data processed in the performance of support services.

16.3. Furthermore, the ECB welcomes the empowerment of the Commission to tackle money laundering and financing of terrorism risks stemming from the use of offline digital euro by setting appropriate operational limits. For the online model of the digital euro, while the current proposal provides for a level of privacy comparable to existing cashless means of payment, the ECB also suggests considering the possibility of offering increased privacy for certain low-risk, low-amount payments in digital euro.

17. Fair, reasonable and non-discriminatory access to mobile devices

The ECB welcomes the addition of a provision seeking to address the access issues in relation to certain mobile device features that are necessary for user-friendly, seamless and secure digital euro payments on mobile devices ⁽⁹⁶⁾. Access to the necessary near field communication features is vital for mobile device contactless payments and access to the secure element is vital for mobile device based offline digital euro payments. Such access should be open and not dependent on other mobile operating system applications. The ECB supports that the Commission is empowered to adopt a delegated act to further specify the requirements to effectively achieve this non-discriminatory access, since this may support the timely availability of digital euro offline services.

18. Reporting requirements

18.1. The proposed regulation states that the accountability arrangements set out in Article 15.1 and 15.3 of the Statute of the ESCB are to apply to the issuance and use of the digital euro ⁽⁹⁷⁾. This is consistent with the proposed regulation's recognition that the Eurosystem will be issuing the digital euro in accordance with the Treaties ⁽⁹⁸⁾, i.e. based on a pre-existing own competence.

⁽⁹²⁾ See Article 32 of the proposed regulation.

⁽⁹³⁾ See Articles 32 and 34 to 36 of the proposed regulation.

⁽⁹⁴⁾ See Articles 35 and 36 of the proposed regulation.

⁽⁹⁵⁾ See Articles 35(5) and 36(5) of the proposed regulation.

⁽⁹⁶⁾ See Article 33 of the proposed regulation.

⁽⁹⁷⁾ See Article 40(1), first subparagraph, of the proposed regulation.

⁽⁹⁸⁾ See Article 4(1) of the proposed regulation.

- 18.2. Moreover, the proposed regulation sets forth additional, detailed reporting requirements ⁽⁹⁹⁾. The ECB notes that if the authorisation to issue and the issuance of the digital euro are ECB and Eurosystem tasks, it should suffice to make reference to the ECB's accountability arrangements under Article 15.1 and 15.3 of the Statute of the ESCB. Moreover, existing institutional mechanisms already allow for the European Parliament, the Council and the Commission to request additional information from the ECB when needed.
- 18.3. Furthermore, the proposed regulation establishes an obligation for the ECB to provide the European Parliament, the Council and the Commission with information '*ex ante*' on the instruments to limit the use of the digital euro and an analysis on how the instruments and the parameters it sets are expected to meet the objective of safeguarding financial stability ⁽¹⁰⁰⁾. While the ECB stands ready to inform the other Union institutions about its intentions to promote transparency and predictability, any accountability regime should respect the terms of Article 15 of the Statute of the ESCB, which clarifies that the ECB's accountability takes place *ex post facto*. The obligation for *ex ante* information sharing should not be interpreted as an enabling provision for the recipients to alter *future* Eurosystem action, in disregard of the independence of the ECB under Article 130 TFEU.
- 18.4. Provided the ECB remained free to decide on its policy and not receive instructions, there would be no conflict between the ECB's reporting obligations under the proposed regulation and Article 130 TFEU. The ECB thus considers that the references to its role in providing opinions, reports, monitoring and assistance to the Commission, the Council and the European Parliament could be further qualified to accurately reflect the ECB's tasks and independence under the Treaties and the clear allocation of technical expertise and responsibilities under Union law ⁽¹⁰¹⁾.
19. ***Specific observations on the proposed regulation regarding the provision of digital euro services outside the euro area***
- 19.1. The ECB welcomes the proposed regulation on the provision of digital euro services outside the euro area, which is pivotal for ensuring that all PSPs, 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. Indeed, apart from the digital euro being a legal tender means of payment within the euro area, digital euro payment transactions, as well as the PSPs facilitating them, should comply with Union payments legislation, which is generally based on Article 114 TFEU.

Where the ECB recommends that the proposed regulations are amended, specific drafting proposals are set out in a separate technical working document accompanied by an explanatory text to this effect. The technical working document is available in English on EUR-Lex.

Done at Frankfurt am Main, 31 October 2023.

The President of the ECB
Christine LAGARDE

⁽⁹⁹⁾ See Article 40(1) of the proposed regulation.

⁽¹⁰⁰⁾ See Article 40(2) of the proposed regulation.

⁽¹⁰¹⁾ See paragraph 1.3 of Opinion CON/2018/20 of the European Central Bank of 11 April 2018 on a proposal for a regulation on the establishment of the European Monetary Fund (OJ C 220, 25.6.2018, p. 2). All ECB opinions are available on EUR-Lex.