

From: EMA

To: European Commission Digital Euro Regulation Team

Subject: EMA response to the EC proposal for a Digital Euro Regulation (Com 2023/368)

Date: 11 Sept 2023

We welcome the opportunity to engage with, and respond to the European Commission's proposal for a digital Euro regulation, and set out our comments below.

I. Chapters III & IV, Articles 7-14 Legal Tender, Distribution

We note the need for the digital euro (“DE”) to have legal tender status. We note also the prevalence of other electronic means of payment that are accepted in the market-place and which will therefore be impacted by its introduction. To this end, we make comments in relation to proposed provisions, with a view to minimising the impact on the business of payment service providers and on payment systems.

- (i) We would like to begin by stating that we see the DE as an opportunity for innovation in the payment sector and a business opportunity for PSPs of all sizes. Our members welcome the initiative.
- (ii) The impact on small and medium sized merchant acquirers however requires some attention. PSPs that provide payment services to merchants will come under pressure to provide DE acceptance functionality to their merchant customers, as failing to do so would leave the merchants without a means to meet their own DE acceptance obligations. This means that the cost of building DE acceptance functionality, with attendant waterfall mechanism, will need to be met by acquiring firms of all sizes.

The development of front-end systems by the ECB as envisaged in the proposal will help. However, the intended objective of allowing PSPs to “rely on front-end services provided by... the European Central Bank, notably in the case where the cost of developing and operating front-end services, including applications, are disproportionate” (see recital 61) can only be achieved if these front-end services are provided free of charge. Even under these circumstances smaller PSPs may well struggle to finance the necessary set up for providing DE services.

It is imperative therefore that this is addressed as a public policy issue if the interests of SME PSPs and the diversity of the PSP marketplace is to be preserved. We suggest consideration be given to the creation of a DE infrastructure fund that can be accessed by PSPs and merchants of all sizes. This can be addressed as a recital, or addressed in the impact study that accompanies the proposed Regulation.

- (iii) Similarly, PSPs with both consumer and business products will offer services that may meet similar objectives, adopting similar use cases to those of a DE product. Understanding the impact on the businesses of providers, and providing incentives for offering DE equivalents of existing products would be helpful. This could again be explored in the recitals and addressed as part of a broader impact assessment.
- (iv) The above issues could become more acute if the commercial proposition envisaged for the DE places it at an advantage in comparison with existing payment services. Article 17(1) for example requires the offering of basic DE services free of charge.
- (v) The exemption from obligatory acceptance provided at Article 10, requiring agreement to be individually negotiated with the payer could be broadened to allow for automated agreements to be acceptable where certain conditions are met. This could allow for such conditions to be implemented as part of smart contracts and where automated agreement and execution of contracts is desirable. This could for example be implemented where the DE is not a practical option in a given set of circumstances, where for example credit lines are used, or where the payer is unable to offer the DE, or can only proffer funds through a particular means of payment.
- (vi) We concur with the provision to allow users to hold multiple DE payment accounts as set out at Article 13(7). This will provide for greater choice and enable users to utilise the functionalities of different DE products offered by different PSPs.
- (vii) Article 14 requires AMLA and the EBA to address the interaction of AML/CTF obligations with those of financial inclusion in relation to the DE. In order to maintain a level playing field with non-DE payment services, this provision should be broadened to include non-DE payment products that serve a similar purpose. This should explicitly include electronic money services.

II. Chapter V Use of DE as a store of value & means of payment; Articles 15-

- (i) Article 17(2): provides for limits on charges levied to merchants, and for these to be no more than comparable fees charged for other digital means of payment. There is however in relation to the DE, a requirement to offer the basic service at no cost to natural persons, which may not be the case for other means of payment - see Article 17(1). This needs to be addressed in any comparison to other payment products. In other words, the level set at 17(2)(b) needs to take account of the total fees levied on both payers and payees for other means of payment, when assessing the comparative fees charged for the DE.
- (ii) Article 17 (5): the calculation methodology for setting limits for merchant service charge/inter-PSP fee based upon the cheapest quarter of DE market assigns the ECB price determining power in a market in which it competes with private sector providers, based upon regulation targeted at promoting the use

of the DE. Reference to the cheapest quarter of the DE market will result over time in a squeeze that continuously pushes the price down, whilst potentially disregarding differences in quality of service. This also raises concerns regarding potential conflicts of interests (see below re Article 40).

- (iii) We are supportive of the prohibition on charging of fees for funding, defunding and Article 13(4) transactions, including on inter PSP charges, as set out at Articles 17(6) and 17(7).

III. Chapter VII Technical Features

Article 26: We would be grateful for clarity regarding the following statement: "the European Central Bank shall seek to enable, to the extent possible and where appropriate, private digital means of payment to use rules, standards and processes governing the digital euro payment services." This could be interpreted as requiring the ECB to compel the private sector to use DE rules, standards and processes. If this is the case, we would be grateful for an elaboration of this objective, along with its limitations, and how it would address possible conflicts of interest with the ECB's role exercising oversight of the payment system - (see also our comments regarding Article 40).

Article 28: We see the optional employment by payment service providers of front-end services developed by the ECB as a crucial component of the widescale and coordinated rollout of the digital euro, allowing payment service providers' compliance with regulatory deadlines.

IV. Chapter IX Anti Money Laundering

Article 37: We are supportive of the pragmatic means of addressing offline transactions in the DE. We support the principle of allowing users to transact offline DE payments privately, without PSPs or central banks being privy to such transactions, whilst simultaneously recording funding and defunding transactions as a means of mitigating AML/CTF risk.

We are further supportive of the principle set out at Article 37(6)(c) when deciding on offline DE transaction and holding limits of "ensuring that the usability and acceptance of the DE as a legal tender instrument".

This pragmatic approach is consistent with civil society's wish to have privacy as a feature of the DE and their expectation of this being a feature of the DE.

We hope additionally that a common pragmatic approach can be taken to the treatment of electronic money in the forthcoming anti money laundering Regulations, and for the reinstatement of the exclusion of e-money from CDD at low values, and the provision for pragmatic approaches to SDD.

V. Chapter X Final Provisions

Article 40: this refers to the accountability of the ECB and to legacy provisions in ECB statutes. These provisions could also benefit from being strengthened with a view to the ECB's new DE related role.

This is because ECB-issued DE and related services will compete with private PSP's digital means of payment, whilst at the same time some of those same PSPs will be subject to ECB's oversight under the PISA framework, and for some under the ECB SSM banking supervision.

ECB powers to set limits for inter-PSP fees and merchant services charges could be seen as direct market influence and therefore benefit from identification, mitigation and management of related conflicts of interest.