

EBA CLEARING response to the proposed establishment of a Digital Euro

As the private sector operator of the pan-European SEPA payment systems STEP2-T and RT1, EBA CLEARING welcomes the opportunity to provide feedback on the proposed establishment of a Digital Euro.¹ EBA CLEARING also refers to its previous submission in this respect, available on the Company's website.²

In Annex 1, EBA CLEARING has suggested amendments to the proposal, with a justification for each amendment.

EBA CLEARING is very interested in continuing its active dialogue with the European Union institutions on the evolution of the euro payments landscape in general and, in particular, to discuss the different areas for collaboration between the private and public sector.

Summary

EBA CLEARING believes that:

- Limiting the settlement of the new Digital Euro to a **single infrastructure** would create a **single point of failure** as well as limit competition and innovation. Today, euro transactions in digital form are settled in central bank money in payment systems operated by the private sector as well as in payment systems operated by the public sector. The **co-existence of public and private sector-operated payment systems** ensures the safety, efficiency, resilience, and robustness of European payments.
- There should be a level playing field between all financial market infrastructures, and the **Principles for Financial Market Infrastructures** should apply to any Digital Euro settlement infrastructure.
- The industry has already **invested in today's infrastructure** to settle euro transactions in digital form (i.e. SEPA Credit Transfers (SCT) and SCT Inst). **Interoperability** of the Digital Euro settlement infrastructure with the existing clearing and settlement infrastructures for euros in digital form is essential to exchange money between Digital Euro accounts and other euro accounts.
- The European Commission expects that *"the digital euro will facilitate the development of pan-European and interoperable retail payment solutions, including the full roll-out of instant payments"*.³ To achieve this, new central bank digital currency must be fully **interchangeable** with the existing forms of digital euro. Otherwise, the proposed legislation risks creating a **parallel Digital Euro infrastructure**, which **devalues the investments** made by the industry in retail payments over the past decade. Moreover, a programme for the development of a Digital Euro introduces a **risk of fragmentation and distraction**, which would be counter-productive to achieving the European Commission's policy objectives.

¹ Proposal for a Regulation of the European Parliament and of the Council on the establishment of the digital euro ("Proposal").

² EBA CLEARING's response to the European Commission's Targeted Consultation on a digital euro, June 2022: https://www.ebaclearing.eu/media/azure/production/3088/eba-clearing_digital-euro_summary-for-website.pdf.

³ Explanatory Memorandum to the Proposal, page 1.

- The roles which banks, payment institutions and other entities fulfil today as intermediaries for euros kept in electronic form should be the same for the provision of a Digital Euro to end-users. The benefits of having intermediaries in the model are, in particular, exemplified in situations of a financial crisis when, in case of a bank failure, the Central Bank can play its key role as lender of last resort and ensure financial stability. This **intermediary layer fulfils an important shock-absorbing function** and should continue to do so in a future digital euro set-up.
- It is in the interests of the industry and consumers that all payment instruments are subject to the **same fraud detection and prevention regulations**, and that any legislation supports the development of innovative and **comprehensive fraud detection and prevention solutions** from a **variety of providers**. In this sense, there are unjustified differences between the fraud detection and prevention provisions in the Digital Euro proposal and the proposed Payment Services Regulation.
- Similarly, original equipment manufacturers should be required to offer **fair, reasonable, and non-discriminatory access** to relevant hardware features and software features for **all payment transactions**, and not only for Digital Euro payment transactions. Otherwise, the proposal risks creating a **privileged position** for point-of-sale transactions in central bank digital currency, as compared to point-of-sale transactions in other forms of digital payments in euro (e.g. SCT Inst transactions).
- Today, euros in electronic form do not have the status of **legal tender**, in contrast with cash. If the Digital Euro were to have legal tender status, this would severely distort the **level playing field** between the **Digital Euro** and **other means of electronic payment**.

Annex I: Detailed EBA CLEARING proposals regarding the establishment of a Digital Euro

Article	Proposed EBA CLEARING amendment	Justification for proposed amendments
Article 2(19)	the 'digital euro settlement infrastructure' means the settlement infrastructure of the digital euro adopted by the Eurosystem ;	Article 24 suggests that the Eurosystem will "provide" the digital euro settlement infrastructure, while Article 30 refers to infrastructure "approved by the Eurosystem", and Article 2(19) refers to infrastructure "adopted" by the Eurosystem.
Article 24	To ensure that payment service providers and digital euro users can use conditional digital euro payment transactions, the European Central Bank may [...] (b) determine a set of <u>provide the</u> functionalities <u>to be respected by</u> in the digital euro settlement infrastructure necessary for the execution of conditional digital euro payment transactions, including for the reservation of funds	The Proposal is not at all clear as regards: (1) the process by which the Eurosystem will adopt or approve the settlement infrastructure; and (2) whether more than one infrastructure, including private sector-operated systems, could be approved, or adopted.
Article 30	Final settlement of online digital euro payment transactions shall occur at the moment of recording the transfer of the digital euros concerned from the payer to the payee in the digital euro settlement infrastructure approved by the Eurosystem .	Clarity as to these points is critical for the operational resilience of the digital euro. Today, euro transactions in digital form are settled in central bank money in payment systems operated by the private sector, as well as in payment systems operated by the public sector. The co-existence of public and private sector-operated systems contributes to the safety, efficiency, resilience, and robustness of European payments. Limiting the settlement of the new Digital Euro to a single Eurosystem-operated infrastructure would create a single point of failure and limit competition and innovation.
Article 26	The European Central Bank shall seek to ensure to the extent possible the interoperability of standards governing digital euro payment services with relevant standards governing private digital	Interoperability of the Digital Euro settlement infrastructure with the existing clearing and settlement infrastructures for euros in digital form is <u>essential</u> .

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	means of payment. 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. For the purpose of the first subparagraph, interoperability may be supported inter alia by the use of open standards.	Beyond this, a new central bank digital currency must also be fully <u>interchangeable</u> with the existing forms of digital euro. It should be possible for a payer to make a payment in central bank digital currency that is received by the payee in a non-CBDC payment account (and vice versa). Otherwise, the proposed regulation risks creating a parallel CBDC infrastructure, which devalues the investments made by the industry in retail payments over the past decade. Finally, it would be more efficient for the European Central Bank to leverage existing standards, which have already been invested in and adopted by the industry, instead of creating a new set of standards.
Article 32(1)	The European Central Bank may facilitate the fraud detection and prevention tasks that payment service providers shall perform under Directive 2015/2366 by establishing a general fraud detection and prevention mechanism for online digital euro transactions to ensure the smooth and efficient functioning of the digital euro. That general fraud detection and prevention mechanism may be operated directly by the European Central Bank or by the providers of support services designated by the European Central Bank.	It is crucial that there is a regulatory level playing field for all forms of digital payments in euro. Otherwise, the proposal risks creating more favourable conditions for CBDC payments, as compared to other digital payments in euro (e.g. SCT, SCT Inst). All euro transactions in digital form should be subject to the same fraud prevention and detection requirements.
Article 32(3)	The fraud detection and prevention mechanism shall: (a) assess the exposure to fraud risk of online digital euro transactions in real-time at the exclusive use of payment service providers before the transaction is introduced into the digital euro settlement infrastructure;	As currently drafted, Article 32(4) provides a much broader scope to PSPs to share information with third

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	(b) support payment service providers in detecting fraudulent transactions in online digital euro payment transactions that have been settled	party service providers, than the equivalent provision in the Payment Services Regulation (PSR) (Article 83).
Article 32(4)	For the purpose of this Article, payment service providers shall provide the fraud detection and prevention mechanism with information referred to in Annex 5. Payment service providers shall implement appropriate technical and organisational measures including state-of-the-art security and privacy-preserving measures to ensure that the support service shall not be able to directly identify the digital euro users on the basis of the information provided to the fraud detection and prevention mechanism.	Similarly, the Digital Euro proposal creates a privileged position for the ECB to “establish” and potentially operate fraud detection and prevention mechanism for the Digital Euro. There is no objective justification for such differences between the two proposed laws. It is in the interests of the industry and consumers that all payment instruments are subject to the same fraud detection and prevention regulations, and that any legislation supports the development of innovative and comprehensive fraud detection and prevention solutions from a variety of providers. EBA CLEARING further notes that the Payment Services Regulation is also supposed to apply to the future Digital Euro, so it is essential that there are no conflicts between the PSR and any Digital Euro legislation (PSR, Recital 28 and Article 3(30)).
Article 33	Without prejudice to Article 6 paragraph (7) of Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828, original equipment manufacturers of mobile devices and providers of electronic communication services within the meaning of Article 2(1) Directive (EU) 2018/1972 shall allow providers of front end	Article 33, as drafted, would require original equipment manufacturers to offer fair, reasonable, and non-discriminatory access to mobile devices <u>for Digital Euro-related services only</u>. This provision would create a privileged position for point-of-sale transactions in central bank digital currency, as

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	services and providers of European Digital Identity Wallets effective interoperability with, and access for the purposes of interoperability to, the hardware features and software features necessary for storing and transferring data to process online or offline digital euro transactions<u>payment transactions within the meaning of the Payment Services Regulation</u>, on fair, reasonable and non-discriminatory terms.	compared to point-of-sale transactions in other forms of digital euro (e.g. SCT Inst transactions). There is no objective justification to distort the level playing field in this regard. Indeed, it runs counter to the European Commission's stated objectives in the Instant Payments Regulation to create greater competition at the point of sale,⁴ by limiting original equipment manufacturers' obligations to only one form of digital payment in euro.

⁴ 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, Recital 1.