



Digital euro and euro cash from a consumer policy perspective

COM(2023) 369

COM(2023) 364

Executive Summary

Assessment in summary

The Chamber of Labour (AK) welcomes the plan to introduce a digital euro as a legally established alternative for consumers to the numerous existing means of payment from private issuers. AK also welcomes the proposed new legal framework and the fundamental commitment to euro cash. It should be emphasised that great importance will have to be placed on the actual and legally coherent design of both forms of central bank money.

The digital euro could represent added value for consumers providing that the following conditions are met:

- Offline payments are possible, e.g. by loading the digital euro onto a data carrier without a connection to a central computer of a bank or payment system.
- Payment can be made at any place and at any time.
- The comprehensive usability and acceptance of the digital euro is ensured, i.e. non-acceptance by merchants is strictly limited.
- The digital euro is inclusive, especially with regard to disadvantaged consumer groups such as people without a payment account or permanent residence.
- Privacy is respected: the European Central Bank (ECB), as the issuer of the legal tender euro, has no interest per se in the commercial use of user data; this does not apply to private, commercially oriented providers (as data trading can be monetised).
- It is largely free to use and is therefore a real alternative to credit card payments.
- Sufficient security against fraud is provided.

It is problematic that the draft regulation contains numerous vague provisions and the authorisation for the Commission to adopt delegated acts, for example with respect to exemptions from the obligation to

accept the digital euro. Furthermore, it is envisaged that the European Central Bank (ECB) will be able to take measures to restrict the use of the digital euro as a store of value, making it almost impossible to make a final assessment of this important project.

AK calls for the following

- Provision of the digital euro must be designed in such a way as to guarantee general availability and easy accessibility for all EU citizens.
- General acceptance and access to cash must be maintained. Obligations to accept the digital euro should be strictly defined and exemptions from the acceptance obligation should be narrowly defined in both the regulations concerned. The aim must be to guarantee freedom of choice with respect to the use of payment methods.
- There may be exceptions, for example if cash payment is not customary due to the nature of the contractual relationship, e.g. in the case of recurring payments in the scope of a contractual relationship such as for insurance or telecommunications contracts or online purchases.
- The range of „basic services“ that payment service providers are required to provide free of charge for the digital euro should cover users' everyday payment needs, both online and offline. Direct debits should also be included.
- The digital euro should be available in various formats, including at least a mobile wallet (on a mobile phone) and a physical payment card.
- The digital euro should offer cash-like privacy for both offline and online transactions involving small amounts of money.
- The digital euro must offer a high level of security against online fraud.

AK's position

Content of the draft

On 28 June 2023, the European Commission published two proposals for regulations concerning the euro as legal tender:

- Proposal for a Regulation of the European Parliament and of the Council on the establishment of the digital euro (COM (2023) 369)
- Proposal for a Regulation of the European Parliament and of the Council on the legal tender of euro banknotes and coins (COM (2023) 364)

The two proposals combined are intended to achieve the central goal of de-facto and legal equivalence of the digital euro and euro cash as legal tender. It is expressly welcomed that the digital euro in the form of a legal tender is to be introduced as a largely free and secure payment alternative to payment cards (especially credit cards) and crypto assets, as unilaterally defined conditions and (high) costs can be imposed on consumers in the case of payment methods issued by private companies.

The digital euro has the potential to strengthen the Single Euro Payments Area. Nevertheless, there are concerns that the digital euro could impair or effectively devalue euro cash. Surveys conducted by the Austrian National Bank (OeNB) on the use of payment methods show that cash is clearly the preferred payment method in Austria. It should be underlined that the digital euro is intended merely to complement, rather than replace, euro cash under the proposed legislation.

The digital euro is to be universally applicable and widely used. That is to be ensured by the obligation – imposed on credit institutions – to offer natural persons basic payment services in connection with the digital euro free of charge, as well as by an extensive obligation to accept the digital euro. However, both proposed regulations contain exemptions to the acceptance obligation that could hinder widespread use of the digital euro. In addition, there is a risk that the lack of a ban

on ex-ante exclusions of euro cash will in practice lead to more and more businesses unilaterally refusing to accept cash, e.g. by placing a sign by the entrance door.

There are to be separate payment accounts for access to the digital euro. In addition, it should also be possible to store digital euros offline on a device (a card or other external medium). That is welcome and means that payment transactions can be made offline and online. In AK's opinion, it is critical that the privacy of offline payments be protected in the same way as cash payments, which can be made anonymously. Even if the regulations leave many questions unanswered, particularly from a technical point of view, the objectives of protecting privacy and data protection are welcomed and further efforts should be made to strengthen data protection with respect to online payment transactions.

Regulations are planned for the necessary financial and digital inclusion, for example to ensure that people who are not customers of credit institutions are offered basic services in connection with the digital euro by public authorities or post offices. Those public bodies should provide access and support to people who do not wish to open a digital euro account with a bank. Persons with disabilities, functional limitations and limited digital skills are to receive special assistance.

Key provisions in detail - Acceptance obligation and cash supply

AK welcomes the fact that the digital euro is to be granted the status of legal tender alongside cash, resulting in a fundamental obligation to accept it. It is important that there is an exemption from the acceptance obligation for natural persons who are not acting in the course of a commercial activity. That ensures freedom of choice with respect to acceptance of the digital euro.

It is also essential – as is shown by previous experience with refusals to accept cash – that payees cannot exempt themselves from the obligation to accept cash by means of a notice or general terms and conditions. AK instigated cease and desist proceedings against a large retail company in summer 2023 because a sign in

some branches stated that only card payments were possible. Unfortunately, the draft Cash Regulation – which only allows Member States to adopt measures retrospectively in the event of identified deficiencies with respect to the acceptance obligation – lacks such a central protective provision regarding unilateral exclusion. This shortcoming with regard to the fundamental equal treatment of the digital euro and euro cash as legal tender should be eliminated by also introducing an explicit ban on ex-ante exclusions of euro cash and by placing the burden of proof for an agreement on the payee. There may be exceptions, for example if cash payment is not customary due to the nature of the contractual relationship, for example in the case of recurring payments in the scope of a contractual relationship such as for insurance or telecommunications contracts or online purchases.

The monitoring obligations of Member States set out in Articles 7 and 8 with regard to the acceptance of and access to cash do not offer adequate protection because intervention is only provided for after serious irregularities have occurred.

The draft pays far too little attention to the fact that banks have made cash transactions, such as account deposits and withdrawals as well as cash withdrawals, much more expensive, as the AK bank monitor (AK-Bankenmonitor) has shown for many years. Such practices, which involve considerable charges for consumers, increasingly hinder the actual use of cash and also disadvantage older and vulnerable customers. Consideration should therefore be given to imposing price caps on payment service providers at which accounts are held to protect the use of cash.

The commitment to access to cash being provided under appropriate conditions, for example with regard to the distance to ATMs, is welcomed in principle. AK advocates that banks fulfil their cash supply function and continue to maintain ATMs in rural areas. The Cash Regulation should set out the specific legal framework for that and establish requirements and criteria to ensure the supply of cash in the Member States.

The exception in Article 9 a), according to which enterprises that employ fewer than 10 people or whose annual turnover does not exceed EUR 2 million are to be exempt from the obligation to accept the digital euro, unless other digital means of payment are accepted, is highly problematic in our view. Given that many companies in Austria fall below one of the two limits, and since it is not comprehensible why the acceptance of the digital euro according to recital 17 should be unreasonable, AK is in favour of the removal of this exception without replacement.

The exceptions set out in Article 9 b), according to which payees may refuse to accept the digital euro in good faith due to specific circumstances beyond their control which are temporary, legitimate and in line with the principle of proportionality, are too broad and could therefore be abused by payees. The supervisory authorities should be tasked with closely examining whether companies have taken sufficient structural precautions to fulfil the acceptance obligation. We are also critical of the overly vague possibility in Article 11 for the Commission to adopt further exemptions of a monetary law nature by means of delegated acts. This a priori announcement of further exclusions does not create legal certainty and instead undermines the value of the digital euro. It is also unclear why such exceptions are not reserved for the European legislator.

Provision of the digital euro and costs

AK welcomes the fact that credit institutions offering payment accounts must also offer certain defined services in connection with the digital euro. It is also reasonable for credit institutions to be subject to a contracting obligation with regard to basic services in connection with the digital euro, as regulated in Annex II, analogous to the basic account regulated in the Payment Accounts Directive, and even for the legislation to go beyond the Payment Accounts Directive by stating such services should be free of charge. The provisions are supplemented by a cost cap on the fees that payment service providers may charge merchants.

It is also welcomed that the ECB is to develop its own front-end services in accordance with Article 28 and that consumers should have the choice of using the digital euro via the app of a payment service provider or via the ECB's public app.

Not only credit institutions, but also public authorities and post offices – to be determined by the Member States – are to provide basic payment services in connection with the digital euro pursuant to Article 14 (3) and (4). The aim is to promote the inclusion of people who do not have a traditional payment account or do not wish to have one. In addition, people with disabilities, functional limitations or limited digital skills are to be offered support with digital inclusion. Such a provision is uncharted territory; it is untested and is also formulated rather vaguely. For example, it is not sufficiently clear exactly which people with limited digital skills are referred to here. According to a recent survey by Statistics Austria only 63% of the population in Austria have basic digital skills, while the equivalent figure across the EU is just 54%, which means that this could include almost half of the population. However, it is evident that support services are useful, and it

certainly makes sense for such services to be offered in a low-threshold way.

Payment service providers are to be authorised to offer various fee-based „service packages“, which should be understood as product combinations of a payment account for the digital euro and for conventional payment accounts (recital 40). The resulting product complexity should be viewed critically because tying and/or bundling effects are to be expected, which can be detrimental to consumers. To put it bluntly, providers could create such „service packages“ in order to make the matter of reasonable pricing opaque or more difficult to assess. It would therefore remain unclear which price is charged for which service. That problem arises, for example, with credit cards and/or insurance for accidents, travel, death etc. included in conventional payment accounts.

It also does not appear to be clearly regulated which provisions of Article 13 are also to be applied to the basic services, such as paragraph 3, which stipulates that payment service providers must provide funding and defunding functionalities at all times and on a continuous basis. In order to ensure usability as a means of payment, there should be no restricted service times for the basic services. The same applies to the waterfall functionalities. These are not listed in Annex II, although recital 40 mentions that they are free of charge. With regard to the waterfall functionality and the reverse waterfall functionality, the fundamental criticism should be made that both mechanisms are essentially uncharted territory and have not been fully developed in either legal or practical terms.

In contrast to the English version, the German version of Annex II does not contain the provision in e) that payments by governments to persons should also form part of the basic services. Only payments from persons to governments are listed.

In order to prevent credit institutions from „hiding“ the mandatory offer of digital euro services, it is necessary to include specific information obligations in the regulation. An AK survey including mystery shopping in bank branches and on bank websites in 2023 showed that information on the basic account and appropriate advice are not provided in some cases, although the Austrian Consumer Payment Account Act sets out an obligation to provide clear information, along with support and guidance for particularly vulnerable consumers. For that reason, the supervisory authorities should be authorised to closely monitor compliance with the credit institutions' obligations in this regard, including through mystery shopping, and be able to impose deterrent sanctions.

Use of the digital euro as a store of value

It is striking that the use of the digital euro is to be subject to legal and de-facto restrictions. For example, it is stipulated that the digital euro should be restricted in its capacity as a „store of value“ in order to function (exclusively) as a means of payment, and the European Central Bank is authorised to introduce holding limits. That restriction does not apply to euro cash, as money generally (also) serves as a store of value. In AK's opinion, it is therefore essential that usability and acceptance as legal tender are not restricted by such limitations in Article 16. In the event that a link to an existing current account is used, this should be available for online payments using the waterfall functionalities. For consumers who do not link their digital euro account to a current account, a holding limit that is set too low would restrict the usability of the digital euro. The same applies to offline payments. AK therefore calls for a critical review of the need for holding limits. The holding limits should be based on consumer interest.

Prevention and detection of fraud

In principle, it is necessary and welcomed that strong mechanisms for fraud prevention and the detection of fraud cases are to be put in place, although the provisions remain rather vague. In order to avoid moral hazard on the part of payment service providers, meaning here a reduced incentive to invest in their own security systems, the supervisory authorities should ensure that this incentive is maintained by imposing strict sanctions if insufficient attention is paid to combating fraud at payment service providers. Complaints made to AK's consumer advice service indicate that credit institutions do not comply with all relevant provisions of the Payment Services Directive and the corresponding regulations, for example with regard to transaction monitoring. Furthermore, AK assumes that all requirements under the Payment Services Regulation also apply to the digital euro.

Data protection and privacy

Cash is the only means of payment that can currently be used anonymously. Electronic payment methods provide a detailed insight into the everyday lives and personalities of consumers. The digital euro offers the opportunity for more privacy with regard to payment transactions. In the case of anonymous payments, only data for „funding and defunding“ are to be processed in the equivalent way to cash withdrawals from ATMs. For online payments, the proposal does not limit the purposes for processing personal data – as is the case for standard digital payment methods.

The sharing of data for commercial purposes would thus be permitted. That fails to satisfy a core objective of the concept of the digital euro, namely to give consumers better protection against commercial data processing. AK proposes that a higher level of privacy should also be made possible for online payments – within defined limits. In line with the proposal of the European Data Protection Board, online payments below those limits should be protected from tracking.



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About us

The Austrian Federal Chamber of Labour (AK) is by law representing the interests of about 3.8 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore, the Austrian Federal Chamber of Labour is a part of the Austrian social partnership. The Austrian Federal Chamber of Labour is registered at the EU Transparency Register under the number 23869471911-54.

The main objectives of the 1991 established AK EUROPA Office in Brussels are the representation of AK vis-à-vis the European Institutions and interest groups, the monitoring of EU policies and to transfer relevant information from Brussels to Austria, as well as to lobby the in Austria developed expertise and positions of the Austrian Federal Chamber of Labour in Brussels.