

First Comments

on the EU Commission's legislative proposal on
the digital Euro from 28-06-2023

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Contact:

Jens Holeczek

Head of Digital Payment Unit

Telephone: +49 30 2021-1820

E-Mail: j.holeczek@bvr.de

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Coordinator:

National Association of German

Cooperative Banks

Schellingstraße 4 | 10785 Berlin | Germany

Telephone: +49 30 2021-0

Telefax: +49 30 2021-1900

www.die-deutsche-kreditwirtschaft.de

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On June 28, 2023, the European Commission (COM) published its legislative proposal for a digital Euro and an annex (Regulation DigE)¹. While only technical aspects have been discussed so far, fundamental questions must now be answered. Otherwise, there is a growing risk that the digital Euro will have negative consequences for Europe's economy and citizens and will fail due to a lack of acceptance in society. The German Banking Industry Committee (GBIC) has constructively supported the ECB's investigation phase into a digital Euro from the very beginning. The introduction of the digital Euro will have a significant impact on the economy, society, the monetary system and the payments industry. It is therefore important to leverage the expertise of all stakeholders to create real value with the digital Euro and avoid unintended negative consequences. In this context, the now published proposal of the European Commission has confirmed and even further strengthened many of GBIC's concerns. With this first statement, GBIC would like to address the essential contents of the legislative proposal and take a constructive position on it.

Key demands of the German Banking Industry Committee regarding the digital Euro

(1) The digital Euro should be designed as the digital equivalent to cash.

A digital Euro can help strengthen European sovereignty in payment transactions and is supported by the German Banking Industry Committee if it is designed as the **digital equivalent to cash** (in particular, comparable anonymity to Euro cash, offline capability, technical security).

(2) The ECB should issue the digital Euro purely as a means of payment, not as a retail payment scheme.

Designing the **digital Euro** as the digital equivalent of cash means developing it **as a means of payment** and **not as a retail payment scheme**. The market-driven design of retail payment schemes must be left to the private sector. We do not believe that the ECB's design of the digital Euro as a fully comprehensive retail payment scheme is appropriate, as this would not allow any additional innovation potential compared with the services possible under the SEPA standards. On the contrary, this would put existing and future European private-sector retail payment schemes at a disadvantage and thus **counteract** the goal of the digital Euro to strengthen **Europe's sovereignty**. This applies both to the status quo of existing private-sector retail payment schemes and to future private-sector innovations in payment traffic. Moreover, it is questionable whether a digital Euro planned by the ECB, which is not designed to be cash-like and integrated into a new ECB retail payment scheme can be justified via the legislative requirements of Article 133 of the Treaty on the Functioning of the European Union (TFEU).

In addition, the legislative proposal in its current form creates **high technical complexity** in various areas, which may lead to additional problems in the realization of the digital Euro (e.g.,

¹ Proposal for a Regulation of the European Parliament and of the Council on the introduction of the digital Euro of 28.06.2023, COM (2023) 369 final. In parallel, the COM has published another legislative proposal containing regulatory proposals on Euro cash. GBIC is responding to this legislative proposal in a separate statement.

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number of wallets per user, funding source with other intermediary than wallet, funding/defunding for corporate payments, risk and fraud management).

(3) The digital Euro must not serve as a store of value.

To safeguard the stability of the European financial system, **the digital Euro** must be limited to its function as a means of payment and **must not be able to be misused speculatively for the purpose of storing value**. To this end, legislators must impose **a legally secure, low three-digit holding limit** and a **ban on interest rates** to prevent the excessive outflow of deposits at banks and savings banks, as this could have a negative impact on lending capacities and costs and thus harm the entire economy. In any case, a sound, holistic and transparent impact analysis must be carried out together with academics and with the participation of the financial sector to be able to make a robust assessment of the extent to which potential deposit outflows can be absorbed by the banking industry and the economy as a whole. Should it appear sensible to transfer the concrete design of certain processes for realizing the digital Euro to the ECB, the legal guidelines for this must always reflect the principles of financial market stability, in particular the maintenance of the proven division of roles between the state, the central bank and private market players.

(4) The digital Euro is only secure and economically sound with a transaction limit.

When using the digital Euro, the **amount of payment** must be **capped by the legislator**, otherwise there is a risk of **erosion of existing and future private payment** methods. The digital Euro is intended as a supplement and analog to cash, but not as a replacement for card payments, for example. The amount of the transaction limit should be based on the maximum holding limit, which defines the maximum current balance in the digital wallet. Like a wallet containing Euro cash, you cannot withdraw more digital Euros from the wallet than are currently in it. If there was no transaction limit, this could also give rise to considerable fraud risks that would be significantly greater than in today's payment transactions.

(5) Acceptance obligation must not disadvantage existing payment methods.

The proposed qualification of the digital Euro as a legal tender with an acceptance obligation can support the success of the digital Euro. However, such a requirement must be proportionate and take appropriate account of the contractual freedom of market players. Otherwise, there is a risk that existing and future private-sector retail payment schemes will be placed at a competitive disadvantage.

(6) Prices must be formed in the market.

Fair and market-oriented pricing for the provision of services related to the digital Euro must be permissible. These **prices must be formed in the market** and must not be prescribed by law. Setting prices by law would constitute an inadmissible encroachment on the contractual and pricing freedom of the market participants involved (issuer, acquirer) and would not be appropriate in view of the functioning market and competition.

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(7) The private sector must be appropriately involved when it comes to new regulation for retail payment schemes.

In the interest of European sovereignty, European companies and all citizens, the **competitiveness of European payment traffic must be strengthened**. This can be achieved primarily by **working in partnership** with banks and savings banks as well as European private sector initiatives such as the European Payment Initiative (EPI).

Currently, the detailed measures, regulations and standards for the digital Euro are being defined by the ECB in the form of a **set of rules**. The private sector has so far been insufficiently involved. We therefore call for all regulations for a digital Euro that are relevant for uniform and interoperable retail payment schemes to be defined by the private sector itself.

(8) Front-end services for the use of the digital Euro are subject to freedom of choice.

The **obligation for credit institutions** to distribute the digital Euro via **the frontend service developed by the ECB must be eliminated**. Otherwise, banks and savings banks would be forced to de-prioritize the development of their own front-end service, primarily to ensure the legally required connection to the ECB service. Credit institutions must have the choice of offering their own front-end service or the one provided by the ECB.

(9) Acceptance by customers must be tested by exhaustive market analysis.

To avoid reputational damage to the Eurosystem, a sound and independent market analysis must be conducted. This analysis should clarify whether society and citizens are sufficiently willing to use a digital Euro in its planned form alongside existing retail payment schemes. Today, numerous procedures are already competing for the favor of customers, for example, debit and credit cards, mobile payments, payment methods in e-commerce, in-app payments, bank transfers and direct debits.

Main contents of the legislative proposal on the digital Euro and initial assessment by the German Banking Industry Committee

a. Digital Euro as legal tender with acceptance obligation must not disadvantage existing payment methods

Content of the legislative proposal: According to Art. 7 of the DigE Regulation, the digital Euro, in addition to Euro cash, has the status of a legal tender², which in principle must be accepted by the payee for payment. Surcharges for the payment of liabilities with the digital Euro are prohibited, Art. 7 (4) Sentence 2 VO-DigE. According to Art. 10 of the Regulation, the unilateral exclusion of payment with the digital Euro by the payee is excluded. Corresponding contractual conditions or business practices are not binding on the payer. According to Art. 9 of the DigE Regulation, exceptions from the obligation to accept payments apply to microenterprises and non-profit organizations, provided they do not accept any

² The digital euro represents a claim against the ECB.

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other digital payment methods, and to private individuals. In addition, according to Art. 11 of the DigE Regulation, the Commission may regulate further exceptions by delegated act.

Initial assessment by GBIC:

The proposed qualification of the digital Euro as legal tender with an acceptance obligation may support the success of the digital Euro. However, such a requirement must be proportionate and take appropriate account of the contractual freedom of market players. The regulations adopted should in any case be consistent with the obligation to accept Euro cash, which will be addressed in a separate legislative proposal³. Discrimination against private-sector procedures for which there is no statutory acceptance obligation must be ruled out to ensure a level playing field for all retail payment schemes in the market.

In this context, we do not consider the design of the digital Euro as a fully comprehensive retail payment scheme in combination with the strict acceptance obligation, as currently envisaged by the ECB, to be appropriate, as it puts existing and future European private-sector retail payment schemes (e.g. EPI, RTP, SEPA, etc.) at a disadvantage and is therefore not conducive to the digital Euro's objective of strengthening European sovereignty and innovation. It even has a counterproductive effect because there is a risk that the choice of payment methods offered to EU citizens will be reduced if they can no longer be offered in an economically attractive way.

b. Proposed division of roles between credit institutions, other payment service providers and the ECB poses a threat to market order

Content of the Legislative Proposal: According to Art. 13 of the DigE Regulation, all payment service providers authorized in the EU may also provide payment services using the digital Euro. However, a contractual relationship between the user of the digital Euro and the European Central Bank is excluded by law. According to Art. 14 (1) of the DigE Regulation in conjunction with Art. 17 (1) of the DigE Regulation, credit institutions are obliged, at the request of their customers (natural persons), to provide certain - very extensive - basic digital Euro payment services (these include: Onboarding, account management, account information, loading/unloading, execution of transactions, provision of a payment instrument) free of charge. Only services going beyond this may be priced. Pursuant to Art. 17(2) of the DTE Regulation, all merchant or inter-PSP fees are subject to the principle of proportionality and must be based, inter alia, on costs. Pursuant to Art. 28 Regulation DigE, payment service providers are in any case obliged to offer their users the front-end service developed by the ECB in addition to their own front-end service (e.g. banking app).

Initial assessment by GBIC:

Broad acceptance of the digital Euro in society and among citizens presupposes a comprehensive offering on the part of the banking industry. However, the obligations in this regard must be designed and distributed in a proportionate manner. Participation in the digital Euro must not be mandatory across the board for all banks and savings banks, but must exempt small institutions and specialist institutions from this obligation.

³ GBIC published a separate statement on this matter.

In addition, in contrast to the proposed legislation, **fair and market-oriented pricing for the provision of services related to the digital Euro must be permissible**. These prices must be formed in the market and must not be prescribed by law. A statutory price requirement would represent an inadmissible encroachment on the contractual and pricing freedom of the players involved (issuer, acquirer) and would not be appropriate in view of the functioning market and competition.

Furthermore, competition is significantly distorted by a state setting of fees for merchants. In general, the objectives of a digital Euro can only be achieved if the underlying regulatory framework makes participation in the digital Euro as a means of payment and retail payment scheme equally economically attractive for all parties. To this end, in the case of a statutory obligation to provide core features free of charge, both **the scope of these core features** and adequate compensation for these features must be appropriate in a market economy so that the digital Euro enjoys broad support.

Moreover, it must be ensured that the **Eurosystem does not create a competitive cost advantage** over other payment methods by internalizing its own costs, substituting European payment solutions and facilitating the market entry of non-European platforms by providing infrastructures. The desired goal of European sovereignty in payment traffic would be jeopardized by such an approach.

Finally, credit institutions should be free to offer the ECB's front-end service or to develop their own. However, the front-end services must also compete in the private sector and must not be prescribed by the ECB. In addition, Article 28(2) of the DigE Regulation clarifies that there shall be no contractual relationship between end-users and the ECB. The question of liability, e.g. in the event of a failure of the front end or the ECB back end, is not answered, but it is imperative that it be clarified before the introduction of a digital Euro.

c. Holding limits and prohibition of interest rates are indispensable to ensure financial stability

Content of the Legislative Proposal: Pursuant to Art. 16(8) of the Regulation DigE, the digital Euro may not bear interest under this Regulation. According to Art. 15 of the DigE Regulation, the use of the digital Euro as a store of value may be restricted to ensure the stability of the financial system. For this purpose, the ECB shall develop instruments to limit the use of the digital Euro as a store of value and decide on their parameters and use. Article 16 (2) of the Regulation DigE defines as cornerstones for the development of such instruments:

- the preservation of financial stability,
- ensuring the usability and acceptance of the digital Euro as legal tender, and
- the principle of proportionality.

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Pursuant to Art. 40 (2) of the DigE Regulation, the ECB is required to submit to the Parliament, the Council, and the Commission an analysis of how the instruments and their parameters will meet the objective of safeguarding financial stability.

Initial assessment by GBIC:

In principle, the rule that the digital Euro may not bear interest rates is positive. This transfers an important characteristic of cash to the digital Euro. However, the selected wording "within the scope of this regulation" may leave room for regulations "outside" the legislative proposal. **A ban on interest must apply universally and be firmly anchored for the future.**

The introduction of a maximum holding limit based on a sound analysis by the ECB and with the involvement of Parliament and the Council, among others, must be sharpened in the legislative proposal from a "may" rule to a binding provision. A digital Euro represents a claim on the central bank. As a result, it is also held on the ECB's balance sheet. Consumers could therefore withdraw deposits from banks and savings banks and shift them into central bank money. The impact of this shift on the liquidity of individual institutions depends on their business model. Without an appropriate holding limit, the outflow of deposits into the digital Euro could significantly limit the ability of banks and savings banks to lend. Loans for businesses and consumers would become more expensive, limiting much-needed and publicly discussed investments related to the environmental and digital transformation. **To effectively limit these risks, it is imperative that the digital Euro be provided with a legally secure holding limit. This holding limit should be in the order of magnitude of the current cash usage in the Euro zone and thus in the low three-digit Euro range.** Because of their importance for the entire European society and economy (see Article 290 TFEU), the fundamental guard rails for a holding limit must be drawn up by the legislator in a democratic process.

When transferring the concrete design to the ECB, the legal guard rails must ensure that the basic idea is preserved with a view to financial market stability and maintaining the proven division of roles between the state, the central bank and the individual financial market players.

In any case, **sound, holistic and transparent impact analyses must be carried out beforehand to be able to make a reliable assessment of the extent to which potential deposit outflows can be absorbed by the banking industry and the economy as a whole.** The performance of such analyses must also be mandatory prior to any future change in the holding limit. The ECB's project has so far dealt with such analyses only inadequately.

Depending on the design of the digital Euro, its introduction could also lead to a significant multiplication of transactions on existing Eurosystem infrastructures. The resulting effects, among others with regard to performance, stability and cybersecurity, need to be further investigated in detail.

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It also remains open how compliance with any holding limit can be ensured by the PSPs (cf. Art. 16 para. 1 ("PSPs shall apply these limits")). This applies against the background that the management of joint accounts is also to be made possible and that it is also to be possible to manage several accounts with different PSPs. In general, it is questionable whether such complex design elements are necessary and advantageous for users when introducing a digital Euro for the first time.

d. Offline capability, privacy and anonymity must be ensured

Content of the legislative proposal: According to Art. 23 VO-DigE, the digital Euro shall be usable online and offline. While the online version should have the same privacy features as existing private payment methods, the offline version should offer the same level of privacy and anonymity as is currently provided by cash.

Initial assessment by GBIC:

The more the digital Euro transfers the characteristics of existing cash into the digital world, the higher its acceptance among the population is likely to be.

Consumers value existing cash for its simplicity, anonymity, widespread acceptance, and the ability to conduct transactions even without being connected to the Internet. All these characteristics could be transferred to the digital world with a corresponding concept for the digital Euro. Limited to cash-like amounts, anonymous offline payments should also be possible within the legal framework, always and everywhere, e.g., via smartphone. Of course, anti-money laundering and sanctions checks must remain possible in the process. At present, there is no passage in the draft law that would allow increased privacy for online payments to intermediaries up to a specified transaction amount through statutory exemptions from anti-money laundering/sanctions controls.

A payment method that has the same characteristics for online transactions as existing and future private sector solutions does not offer consumers any added value. Existing solutions have held their own in the market for years, creating a broad landscape of innovative offerings at competitive prices for business and society.

e. Compatibility of the planned design of the digital Euro with the Treaty on the Functioning of the European Union is questionable

Content of the legislative proposal: The EU Commission bases the proposal on Article 133 TFEU. According to this article, the European legislator may, by means of the ordinary legislative procedure, adopt those measures that are necessary for the use of the Euro as the single currency. The legal framework can be specified in legislative terms by further delegated acts of the COM (Art. 38 Regulation-DigE, EC (10)). Furthermore, the ECB is granted far-reaching powers to determine, on the basis of detailed measures, regulations and standards for the design of the digital Euro and thus its issuance by payment service providers and use by business and citizens (Art. 4, 5 (2), 38 VO-DigE, EC (10)).

Initial assessment by GBIC:

The European Commission links the policy objectives to the Eurosystem's monetary policy mandate. This underlines the high political importance of the anchor function of central bank

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money and stronger European sovereignty in payment transactions. However, this can only succeed if the legal framework allows for a division of roles that is appropriate for these objectives. This should result in a clear division of tasks between the ECB on the one hand and the banking industry and the payment traffic industry on the other. This must be based on the core competencies of the respective parties: **While the ECB can ensure its pan-European availability by issuing the digital Euro, its use must rely on the innovative strength and market expertise of banks and savings banks.** The digital Euro thus has the chance to become a critical success factor for the emergence of European payment methods.

An intensive debate is needed for broad social acceptance and democratic legitimization of the digital Euro. In addition, key aspects of the design must be defined by the legislature (principle of materiality) and cannot be left to the ECB alone.

In order to preserve the proven, two-tier financial system and strengthen it through private competition in a free market, **GBIC calls for the digital Euro to be designed solely as a digital means of payment.** Unfortunately, the legislative proposal favors an independent state retail payment scheme and thus sets the wrong accents. There is a risk of gambling away the success of a digital Euro, as it cannot in this way be embedded in the established structures of the financial, real economy and citizens as well as the legislative requirements of Article 133 TFEU. The possible disinvestment in a government payment system inhibits innovation and may impair the competitiveness and sovereignty of European private-sector solutions in the future. This may also damage confidence in the Euro. We advocate reconsidering these fundamental structures for the development of the digital Euro.

Rules and standards are essential for the retail payment scheme of the digital Euro and ensure interoperability in the Euro zone. This is also the case with existing private-sector payment schemes, such as the SEPA payment schemes, the Spanish BIZUM scheme and also the future offering of the European Payment Initiative (EPI). **For the successful introduction of the digital Euro, it is important that these rules and standards are specifically designed for market needs and are developed in close cooperation between the Eurosystem and the private sector.** The ECB's mandate in defining the rules and standards must be limited to its role as guardian of the monetary system and issuer of a new means of payment. The rules and standards concerning the concrete retail payment scheme, on the other hand, must be defined uniformly and continuously developed by the intermediaries in agreement.

From the perspective of legal practice, the legislative proposal for the introduction of a digital Euro is already giving rise to follow-up legal questions that could have considerable practical implications. In particular, the treatment of a digital Euro under civil law is the focus of considerations here. The fact that the structure of civil law and consequently also the treatment of a digital Euro under civil law is fundamentally reserved for the individual EU member states could prove problematic. Particularly against the backdrop of (EU) cross-border transactions with a digital Euro, the resulting regulatory patchwork could pose a significant challenge to the success of the digital Euro. In addition,

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liability issues in the event of potential counterfeiting of a digital Euro must be mandatorily regulated by law if, as currently envisaged, intermediaries are required to issue a digital Euro.

The digital Euro: A Look forward

With these comments, we as the German Banking Industry Committee have initially classified what we consider to be the key points of the legislative proposal on the digital Euro. But the road to a "good" digital Euro is still a long one to go. Many questions remain unanswered. As the German Banking Industry Committee, we look forward to continuing to actively support and help shape the process toward a new, sustainable monetary system.

The goal of these efforts must be to create real added value for citizens, for the economy, and for society as a whole, in order to support Europe on its way to a new leadership position in the digital world. The currently planned design of a digital Euro in the form of a fully comprehensive payment system and the legislative framework are not conducive to achieving this. In our view, a digital Euro can only deliver real added value for the economy and society as the digital equivalent to cash, i.e., also in the form of a means of payment rather than a comprehensive payment system.

Given the numerous issues surrounding the introduction of a digital Euro, clear proposals should be developed through an open discussion to resolve the various problems and criticisms outlined above, which includes the following challenges:

- Safeguarding **financial stability and efficient financing of the economy**,
- creating real added value for citizens, the economy and society through a **digital Euro as a means of payment**,
- sensible distribution of **roles between the state and the private sector**,
- **protection of privacy and the greatest possible anonymity** when using a digital means of payment,
- ensuring technical security, and
- **the inclusion of the digital Euro (as a raw material) in existing and future private-sector solutions** with pricing models in line with the market.

The German Banking Industry Committee is facing up to these challenges and will gladly continue to make a constructive and active contribution to their solution.