

Response of the EDPB to the European Commission's targeted consultation on a digital euro

Adopted on 14 June 2022



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR ECONOMIC AND FINANCIAL AFFAIRS

DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL
MARKETS UNION

CONSULTATION DOCUMENT
TARGETED CONSULTATION ON A DIGITAL EURO

Disclaimer

This document is a working document of the Commission services for consultation and does not prejudge the final decision that the Commission may take.

The views reflected on this consultation paper provide an indication on the approach the Commission services may take but do not constitute a final policy position or a formal proposal by the European Commission.

The responses to this consultation paper will provide important guidance to the Commission when preparing, if considered appropriate, a formal Commission proposal.

You are invited to reply by **14 June 2022** at the latest to the **online questionnaire** available on the following webpage: https://ec.europa.eu/info/publications/finance-consultations-2022-digital-euro_en

Please note that in order to ensure a fair and transparent consultation process **only responses received through the online questionnaire will be taken into account and included in the report summarising the responses.**

This consultation follows the normal rules of the European Commission for public consultations. Responses will be published in accordance with the privacy options respondents will have opted for in the online questionnaire.

Responses authorised for publication will be published on the following webpage: https://ec.europa.eu/info/publications/finance-consultations-2022-digital-euro_en

Any question on this consultation or issue encountered with the online questionnaire can be raised via email at fisma-digital-euro@ec.europa.eu.

INTRODUCTION

In [March 2021, the Eurosummit](#)¹ called for a stronger and more innovative digital finance sector and more efficient and resilient payment systems and stated that exploratory work on a digital euro should be taken forward.

The introduction of a digital euro aims to preserve the role of public money in a digital economy. Preserving the accessibility and usability of central bank money in the digital era is key to protect monetary sovereignty and the well-tested two-layer monetary system based on convertibility of regulated/supervised forms of money into central bank money. Central bank digital money would thus complement cash in providing a monetary anchor to the payments system by ensuring that private money can always be converted in safe public money. This would support confidence in the singleness of money and financial stability in the digital age.

In addition, the [digital finance and retail payment strategies of the Commission](#)² adopted in September 2020 supported the emergence of competitive pan-European payment solutions and the exploration of a digital euro, while continuing to safeguard the legal tender status of euro cash³. The [ECB's retail payment strategy](#)⁴ shares similar objectives. The digital euro should be considered in the context of ongoing efforts to reduce the fragmentation of the EU retail payments market, promote competition and innovation, including the full roll-out of instant payments, and industry initiatives to offer panEuropean payment services, such as the [European Payments Initiative](#), while ensuring that cash remains widely accessible and accepted.

In October 2020, the [ECB issued its report on a digital euro](#)⁵ and between October 2020 and January 2021 the [EBC ran a public consultation on a digital euro](#)⁶. The ECB's public consultation surveyed both the general public and the financial, payment and technology professionals and sought their opinion on the main features of a digital euro. Out of the 8221 responses, 94% of the respondents identified themselves as citizens. Central banks from non-euro area Member States also envisage issuing digital currencies. In addition, the [ECB commissioned a study on new digital payment methods](#)⁷ that provides a thorough understanding of the current payment habits of citizens of euro area Member States and specifically their attitudes toward digital payment methods.

For a digital euro to be used as the single currency, concurrently with euro banknotes and coins, it would require a Regulation of the co-legislator, upon a proposal by the Commission, on the basis of Article 133 TFUE. Moreover, additional legislative adjustments of the current EU legislative framework to adjust to the digital euro and possibly to digital currencies issued by central banks of non-euro area Member States

¹ <https://www.consilium.europa.eu/media/48975/25-03-21-eurosummit-statement-en.pdf>

² https://ec.europa.eu/info/publications/200924-digital-finance-proposals_en

³ See also ECB cash 2030 strategy https://www.ecb.europa.eu/euro/cash_strategy/html/index.en.html

⁴ <https://www.ecb.europa.eu/pub/pdf/other/ecb.eurosystemretailpaymentsstrategy~5a74eb9ac1.en.pdf>

⁵ https://www.ecb.europa.eu/pub/pdf/other/Report_on_a_digital_euro~4d7268b458.en.pdf

⁶ https://www.ecb.europa.eu/paym/digital_euro/html/pubcon.en.html

⁷ https://www.ecb.europa.eu/paym/digital_euro/investigation/profuse/shared/files/dedocs/ecb.dedocs220330_report.en.pdf

may be needed (e.g. definition of funds under [PSD2](#)). The implementation of the digital euro within the legal framework, will generally fall under the competence of the ECB.

For this purpose, the present targeted consultation complements the ECB's public consultation. It aims to collect further information from industry specialists, payment service providers (including credit institutions, payment and e-money institutions), payment infrastructure providers, developers of payment solutions, merchants, merchant associations, consumer associations, retail payments regulators, and supervisors, antimoney laundering (AML) supervisors, Financial Intelligence Units, and other relevant authorities and experts. This targeted consultation will gather further evidence on the following issues:

1. Users' needs and expectations for a digital euro
2. The digital euro's role for the EU's retail payments and the digital economy
3. Making the digital euro available for retail use while continuing to safeguard the legal tender status of euro cash
4. The digital euro's impact on the financial sector and the financial stability
5. Application of [anti-money laundering and counter terrorist financing \(AML-CFT\)](#) rules
6. The privacy and data protection aspects
7. International payments with a digital euro

This targeted consultation in no way prejudices whether and how these issues will be covered in a legislative proposal by the Commission, or the future scope of that proposal.

For an overview of design options and policy issues discussed in that consultation, please refer to the [ECB report on a digital euro](#)⁸.

Stakeholders are invited to explain their reasoning and provide quantitative evidence or estimates, where appropriate.

⁸ https://www.ecb.europa.eu/pub/pdf/other/Report_on_a_digital_euro~4d7268b458.en.pdf

CONSULTATION QUESTIONS

General comments from the EDPB:

As already expressed in its letter to the EU institutions on the privacy and data protection aspects of a possible digital euro⁹, the EDPB reiterates its view that a high level of privacy and data protection is crucial to enhance end-users' confidence in the digital euro project, and thus ensure its acceptance by European citizens.

In this letter, the EDPB recalled the distinction between an anonymous use of the digital euro and the case where a natural person is identified or identifiable during its use, including if the data are pseudonymised, which requires in that case full compliance with the rules of the GDPR or EUDPR.

If anonymity were ruled out, the EDPB considers that, in order to mitigate risks for the rights and freedoms of data subjects, all the modalities of use of digital euro shall meet a high level of pseudonymisation ensuring, for instance, that personal data can only be accessed upon request by the relevant competent authorities as provided by law.

It seems to the EDPB that a modality offering off-line transactions (without internet connection to be accessible everywhere in the EU) in a non-traceable manner, at least for transactions falling under a certain threshold, is necessary to preserve data subjects' rights.

In the letter, the EDPB underlined that offering another form of digital money issued directly by the ECB in the context of a declining use of cash would positively affect rights and liberties of individuals if the digital euro has features as close as possible to cash. On the contrary, the introduction of holding limits or fees thresholds would affect the rights and freedoms of data subjects by requiring additional data collections and controls. Finally, concentration risks (e.g., cybersecurity) can be foreseen if those supplementary data were processed centrally at the ECB level.

The letter mentioned as well the importance of minimizing situations where the user of digital euro is identified when making a payment. As regards the connection with the EU digital identity wallet, this option would entail more risks than benefits from a privacy point of view, as services on the ground could tend to require clients to provide sovereign identification when paying. The EDPB is of the opinion that no such identification shall be required from the user on top of the compulsory identification at the onboarding stage (which is not necessarily done through the EU e-ID).

⁹ EDPB letter to the European institutions on the privacy and data protection aspects of a possible digital euro, 18 June 2021, available at: https://edpb.europa.eu/system/files/2021-07/edpb_letter_out_2021_0111-digitaleuro-toecb_en_1.pdf

In case international retail transactions are concerned, the corresponding data transfers will have to comply with Chapter 5 GDPR on international data transfers, as interpreted by ECJ in the case C-311/18 (“Schrems 2”).

1. USERS’ NEEDS AND EXPECTATIONS

The digital euro would be available for retail payments¹⁰. Like cash, it would be public money (a direct central bank liability), but in electronic/digital form. The overarching policy objective of digital euro is to preserve the role of public money in the digital age by providing a digital public money alongside cash. This would protect the role of public money as a stabilising anchor for the payments system even as cash use declines, preserve monetary sovereignty and support the competitive provision of financial services. The digital euro may bring benefits to the retail payment market, financial inclusion, the digitalisation of the economy, the EU’s open strategic autonomy¹¹ and the international role of the euro¹² among others.

Achieving these objectives requires in turn that a digital euro is widely adopted and thus that it fulfils the needs and expectations of prospective users. It is therefore important to identify these.

1. *How important do you think the possible following aspects of the digital euro would be for people?*

Please rate each aspect from 1 to 5, 1 standing for ‘not important’ and 5 for ‘very important’.

	1	2	3	4	5	Don't know/not applicable
<i>Availability of flexible privacy settings that can be adjusted to suit the payment occasion</i>					X	Cf. comments
<i>Wide availability and user-friendly onboarding process</i>						
<i>Always an option for the payer to pay anywhere / to anybody in the euro area with digital euro</i>						

¹⁰ To be commonly understood as payments between consumer, businesses and public authorities.

¹¹ Open Strategic Autonomy enables the EU to be stronger both economically and geopolitically - by being: (i) Open to trade and investment for the EU economy to recover from the crisis and remain competitive and connected to the world (ii) Sustainable and responsible to lead internationally to shape a greener and fairer world, reinforcing existing alliances and engaging with a range of partners (iii) Assertive against unfair and coercive practices and ready to enforce its rights, while always favouring international cooperation to solve global problems.

¹² https://ec.europa.eu/info/business-economy-euro/euro-area/international-role-euro_en

<i>Easy to use payment instrument (e.g. contactless, biometric authentication)</i>						
<i>Account-based payment instrument¹³</i>						
<i>Bearer-based payment instrument</i>					X	
<i>Real time settlement / Instant reception of funds</i>						
<i>Cost-free for payers</i>						
<i>Payment asset is credit risk-free (central bank liability)</i>						
<i>Offline payments (face to face without connectivity)</i>					X	
<i>Ability to program conditional payments</i>						
<i>Other benefits (please specify)</i>					X	inclusivity

The EDPB is of the view that the expression “flexible privacy settings” (line 1) does not adequately reflect the priority given by users to confidentiality in the use of digital euro. Privacy rules shall be strong enough to protect the individuals and shall be protective by default. They could show some “flexibility” to suit the informational autonomy of individuals and their decision making based on transparency on purposes of the personal data used, rather than to the use case or “payment occasion”. In other words, privacy settings shall fully embrace the data protection by design and data protection by default principles, as enshrined in the GDPR.

On top of the above, the EDPB considers that the inclusivity of the approach is important, be it to avoid digital exclusion or to foster financial inclusion: therefore, the offline availability of the digital euro is important, as is the multiplicity of possible devices (not only smartphones but as well cards or other devices).

2. *How important do you think the following aspects of the digital euro would be for merchants?*

¹³ The digital euro may function as an account based system (verification of transactions by an intermediary), as a bearer instrument (or token, with verification by parties of a transaction), or a combination of the two. For further explanation, see the ECB report on digital euro. It must be noted that DLT-based solutions are not exclusive of a specific design option, and can be carried out using an both account-based and bearer based instrument

Please rate each aspect from 1 to 5, 1 standing for 'not important' and 5 for 'very important'.

	1	2	3	4	5	Don't know/not applicable
<i>Low acquiring/merchant fees</i>						
<i>Better acquiring services</i>						
<i>Standards for EU wide acceptance infrastructure (e.g. POS), allowing for pan-European payments</i>						
<i>Account-based payment instrument</i>						
<i>Bearer-based payment instrument</i>					X	
<i>Real time settlement / Instant reception of funds</i>						
<i>Offline payments (face to face without connectivity)</i>					X	
<i>Other benefits (please specify)</i>					X	

To the extent you deem it necessary, please explain your reasoning and provide quantitative evidence or estimates.

A bearer-based feature available offline and usable with the properties of physical cash would be the best solution both for individuals and for merchants, as the ECB's consultations have reflected, because it is the closest to current cash and, at the same time, allows strong privacy features.

- In view of the most important value-added features you consider a digital euro may bring to people (see question 1), in which payment situations do you think the digital euro would bring that added value for **people**?

Please rate each scenario from 1 to 5, 1 standing for 'no added value' and 5 for 'very significant added value'.

	1	2	3	4	5	Don't know/not applicable
<i>Paying with / transferring digital euros to a (natural) person face-to-face</i>						

<i>Paying with/transferring digital euros to a (natural) person remotely</i>						
<i>Paying for goods or services at a point of sale (face-to-face)</i>						
<i>Paying for goods or services remotely (ecommerce)</i>						
<i>Machine to machine Payments (Industry 4.0, IoT)¹⁴</i>						
<i>Paying in situations without connectivity – offline face to face payments</i>						
<i>Other situations (please specify)</i>						

To the extent you deem it necessary, please explain your reasoning and provide quantitative evidence or estimates.

4. *In view of the most important value-added features you consider a digital euro may bring to businesses/merchants (see question 2), in which payment situations do you think the digital euro would bring added value for businesses/merchants?*

Please rate each scenario from 1 to 5, 1 standing for ‘no added value’ and 5 for ‘very significant added value’.

	1	2	3	4	5	<i>Don't know/not applicable</i>
<i>Getting paid in physical shops, marketplaces, etc.</i>						
<i>Getting paid in e-commerce</i>						

¹⁴ Machine to Machine payments refer to smart contract based transfers of digital assets between machines such as autonomous cars, manufacturing machines, electricity charging stations and the like. Such transfers of digital assets are conditional upon meeting certain requirements which are coded into the smart contract. For smart contracts see <https://www.eublockchainforum.eu/video/educational/smart-contracts-simply-explained>).

<i>Paying invoices</i>						
<i>Trade finance</i>						
<i>Machine to Machine payments</i>						
<i>Paying in situations without connectivity – offline face to face payments</i>						
<i>Others (please specify)</i>						

To the extent you deem it necessary, please explain your reasoning and provide quantitative evidence.

5. *How important would the following policy outcomes related to the possible issuance of a digital euro be in your opinion?*

Please rate each objective from 1 to 5, 1 standing for ‘not important at all’ and 5 for ‘very important’.

	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>Don't know/not applicable</i>
<i>Providing access to public money in digital form for everyone</i>					X	
<i>Monetary sovereignty</i>					X	
<i>A stronger open strategic autonomy for the EU</i>					X	
<i>A broader access to digital payments for people with less digital skills, disabilities or other physical vulnerabilities</i>					X	
<i>A broader access to digital payments for unbanked people (i.e. without bank account)</i>					X	
<i>Enabling for pan-European payments</i>						
<i>Preserving privacy and data protection in payments</i>					X	
<i>Development of the EU's digital economy innovation</i>						

<i>Facilitating the provision of Europe-wide private payment solutions</i>						
<i>Providing a European public alternative to the emerging new payment solutions such as crypto assets, stablecoins and foreign CBDCs</i>						
<i>Decrease payment costs</i>						
<i>Other (please specify)</i>						

To the extent you deem it necessary, please explain your reasoning and provide quantitative evidence or estimates.

It is important to reiterate the fact that monetary sovereignty and strategic autonomy would have a positive effect to reinforce privacy of citizens that will see their data processed within the European Union, differently as of today where personal payment data are mainly managed by big US-based players.

6. *What aspects or features of the digital euro would be important to support financial inclusion?*

Please rate each aspect from 1 to 5, 1 standing for 'not important' and 5 for 'very important'.

	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>Don't know/not applicable</i>
<i>Easy process of onboarding</i>						
<i>No need for bank account</i>						
<i>Easy payment process (initiating and authenticating a payment transaction)</i>						
<i>Accessible device for payments (e.g. chipcards)</i>						
<i>Enabling of offline, peer-to-peer transactions</i>						
<i>Other (please specify)</i>						

To the extent you deem it necessary, please explain your reasoning and provide quantitative evidence or estimates.

3. MAKING THE DIGITAL EURO AVAILABLE FOR RETAIL USE WHILE CONTINUING TO SAFEGUARD THE LEGAL TENDER STATUS OF EURO CASH

In the Euro area, the euro banknotes have the status of legal tender as stipulated by the [Treaty on the Functioning of the European Union](#). The status of legal tender of coins denominated in euro is laid down in [Council Regulation No 974/98](#). The concept of legal tender of euro cash as interpreted by the CJEU implies: (i) a general obligation in principle of acceptance of cash by the payee (ii) at full face value (iii) for the settlement of the monetary debt by a payer.

Since a retail digital euro would be another form (digital, not physical) of central bank money, it could also be given legal tender status, as is the case for banknotes and coins. Legal tender status should ensure a wide acceptance of the digital euro. This would however have implications on its distribution and acceptance. In particular, legal tender status could imply that a payee cannot generally refuse a payment by a payer in digital euro and that the digital euro would have to be universally accessible.

The concept of legal tender is enshrined in Union law but not defined in detail. According to the ECJ, the status of legal tender implies that a means of payment having legal tender involves a default obligation to accept it at full face value in payments and a corresponding default right to pay with it, unless that obligation and right are restricted for reasons of public interest, or waived by contractual agreement. In principle, the status of legal tender does not preclude the parties from agreeing to use other means of payment or other currencies. If the concept of legal tender was defined in EU legislation, this would regulate legal tender in detail at Union level, and any exceptions could be specified.

This section seeks to address these issues and seeks to get your views as regards the potential impacts of the legal tender status in general and on your institution.

3.1 Possible introduction of legal tender for the digital euro

11. To achieve the digital euro objectives, how important do you consider it is that a payer always has the option to pay with a digital euro as a form of currency having legal tender status?

Please rate your answer from 1 to 5, 1 standing for ‘not important’ and 5 for ‘very important’.

Please explain why. To the extent you deem it necessary, please consider how this could be better achieved.

12. Do you see advantages in regulating legal tender in detail at Union level, including any possible acceptance exceptions, by including a definition of legal tender status for the digital euro in EU legislation?

- *Yes*
- *No*
- *Don't know/no opinion.*

To the extent you deem it necessary, please explain your reasoning and the advantages/disadvantages.

13. Should the legal tender status of the digital euro take inspiration from the current legal tender status of banknotes and coins, while addressing the specificities of a digital form of payment?

- *Yes*
- *No*
- *Don't know/no opinion.*

To the extent you deem it necessary, please explain your reasoning for and against.

14. If the legal tender of the digital euro was defined in EU legislation, would there be a need for (justified and proportionate) exceptions to its acceptance?

- *No*
- *Yes, for merchants not accepting digital means of payment*
- *Yes, for small merchants*
- *Yes, but exceptions should be further specified by Member States*
- *Others, please specify*

To the extent you deem it necessary, please explain your reasoning and provide quantitative evidence or estimates.

15. Should there be a provision to require that the additional exceptions proposed by Member States are subject to approval by the European Commission after consulting the ECB?

- *Yes*
- *No*
- *no opinion*

Please explain.

16. Should there be a provision for administrative sanctions for digital euro non-acceptance?

- *Yes*
- *No*
- *no opinion*

Please explain.

17. If the legal tender status of the digital euro was defined in EU legislation, should it include rules that ensure digital euro is always an option for the payer, so following categories of payees cannot unilaterally exclude digital euro acceptance within its general contractual terms and conditions?

	Yes	No	Don't know/not applicable
<i>Government</i>			
<i>Utilities providers</i>			
<i>Large companies</i>			
<i>Merchants that accept private electronic means of payment</i>			
<i>Others, please specify</i>			

To the extent you deem it necessary, please explain your reasoning and provide quantitative evidence or estimates.

Estimation of costs

This section mainly aims at assessing the costs incurred by stakeholders should the digital euro receive legal tender. While costs would very much depend on the design and functionalities of a digital euro, we are looking at broad estimates and further explanation, including on cost drivers, which will inform Commission impact assessment.

18. Technological and business developments might radically change the current way of payment acceptance (e.g. phones used as terminals). Irrespective of digital euro, how do you expect the cost of the acceptance infrastructure (not the transaction fees) to change with technological developments over the next 5 years?

- 1 significant decrease in cost
- 2 some decrease in cost
- 3 no change in cost
- 4 some increase in cost
- 5 significant increase in cost
- Don't know/ no opinion

Please explain your reasoning and provide quantitative evidence or estimates.

19. The digital euro might be granted legal tender status that merchants would need to adhere to. Which and what type of additional costs would merchants face when starting to accept payments in digital euro?

	<i>With legal tender status</i>	<i>Without legal tender status</i>
<i>Type of additional costs</i>		

Please explain your reasoning and provide quantitative evidence or estimates.

20. For merchants to be equipped to accept the digital euro, new POS terminals, new software or new app-based POS solutions may be needed. Please provide an estimate of the incremental costs necessary to accept payments in digital euro

	<i>Merchants already accepting electronic payments</i>	<i>Merchants not yet accepting electronic payments</i>
	<i>In EUR per terminal</i>	<i>In EUR per terminal</i>
<i>One off costs related to (new) POS terminals for accepting payments in digital euro :</i>		
<i>One-off costs related to software:</i>		
<i>Annual cost for maintenance, licences etc.</i>		
<i>Others please specify</i>		

Please explain your reasoning and provide quantitative evidence or estimates/ranges.

21. Would these costs differ depending on whether the digital euro would be accountbased or bearer based?

- Yes, account-based would be less costly*
- Yes, bearer-based would be less costly*
- No difference*
- Don't know/ no opinion*

Please explain your reasoning and provide quantitative evidence or estimates.

22. How important would the aspects listed below be for Merchants to counterbalance the one-off investment cost of new point of sale (POS) terminals or software that can handle digital euro payments?

Please rate each aspects from 1 to 5, 1 standing for 'not important' and 5 for 'very important'.

	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>Don't</i>
						<i>know/not applicable</i>

<i>Possible savings on the transaction costs of digital euro payments</i>						
<i>With the same (new) POS terminals purchased for digital euro payments, the possibility for merchants to accept other payment solutions offered by supervised private intermediaries</i>						
<i>The possibility for merchant to accept digital euro payments from payers using a variety of devices e.g. smartphones, chipcards, wearables or other devices and contactless functionality (e.g. NFC antennas)</i>						
<i>Others (Please specify)</i>						

To the extent you deem it necessary, please explain your reasoning and provide quantitative evidence or estimates.

Merchant fees

23. For merchants to be equipped to accept the digital euro, services of intermediaries may be needed. Taking into account the (possible) mandatory acceptance of the digital euro in case it has legal tender status, should any boundaries to the fees that may be applied to merchants be set?

- Yes*
- No*
- Don't know/ no opinion*

To the extent you deem it necessary, please explain your reasoning and provide quantitative evidence or estimates.

24. Please qualify the following statements with regard to how merchant fees could be designed

Please rate each aspect from 1 to 5, 1 standing for 'strongly disagree' and 5 for 'strongly agree'.

	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>Don't know/not applicable</i>
<i>Fees on digital euro payments should be based on real costs and a reasonable profit</i>						
<i>Fees on digital euro payments could be based on</i>						

<i>the volume or value of transactions, if and insofar the volume or value has an impact on the real costs of intermediation</i>						
<i>Multilateral interchange fees consistent with the Interchange Fee Regulation may be taken into account in the initial calibration of the fees on digital euro payments</i>						
<i>Fees calculated in another way (please specify)</i>						

To the extent you deem it necessary, please explain your reasoning and provide quantitative evidence or estimates.

25. *Should there be a prohibition on surcharges on payments with digital euro?*

- Yes*
- no*
- Don't know/not applicable*

To the extent you deem it necessary, please explain your reasoning and provide quantitative evidence or estimates.

3.2 The legal tender status of euro cash

*As mentioned in Commission retail payment strategy, while promoting the emergence of digital payments to offer more options to consumers, the Commission will continue to safeguard the legal tender of euro cash. The legal tender of euro banknotes as *lex monetae* is enshrined in Article 128(1) TFEU, according to which ‘the banknotes issued by the European Central Bank and the national central banks shall be the only such notes to have the status of legal tender within the Union’. Furthermore Commission Recommendation of 22 March 2010 on the scope and effects of legal tender of euro banknotes and coins defines three core features for the legal tender: mandatory acceptance, acceptance at full face value and power to discharge from payment obligations ([Official Journal L 83, 30.3.2010, p. 70–71](#)). Next to this, according to the ECJ, the status of legal tender implies that a means of payment having legal tender involves a default obligation to accept it at full face value in payments and a corresponding default right to pay with it, unless that obligation and right are restricted for reasons of public interest, or waived by contractual agreement. The Commission will assess whether recognising the legal tender status of the digital euro also results in a need to define in a binding EU legislative proposal the meaning of legal tender for cash, in line with CJEU jurisprudence, to ensure coherence. We would therefore like to understand better the implications of the possible granting of legal tender status to the digital euro for the definition of legal tender of cash.*

26. *If it were decided to include a definition of legal tender status for the digital euro in EU legislation, please state your opinion on the following statements regarding the legal tender status of euro cash (banknotes and coins):*

Statement	Yes	No	No opinion
<i>The current situation where the legal definition of the legal tender status of cash is set out in the 2010 Recommendation and ECJ jurisprudence is adequate.</i>	X		
<i>Legislative action at EU level is needed to enhance legal certainty and enshrine the legal tender status of euro cash in secondary law.</i>			

Please explain your answers.

In terms of privacy, the legal tender of physical cash is a necessity to support the use of this means of payment, which is important for the rights and freedoms of data subjects and shall be safeguarded. It seems to the EDB that the current approach is adequate in terms of exercise of those freedoms by individuals.

27. *According to your organisation, is there a need for a further definition of justified exceptions to the general principle of mandatory acceptance if those are grounded on reasons related to the 'good faith principle'¹⁵?*

- Yes*
- no*
- no opinion*

Please explain.

From a privacy perspective, there is no reason to introduce new exceptions to the use of physical cash in the EU, which would weaken the use of this means of payment to the detriment of the rights and freedoms of EU citizens as well as to inclusivity.

28. *Which of the following exceptions should be defined?*

Exception	Yes	No	No opinion
<i>No party shall be obliged to accept more than 50 coins in any single payment (except for the issuing authority and for those persons specifically designated by the national legislation of the issuing Member State);</i>		X	
<i>If refusal is for security reasons;</i>		X	

¹⁵ Notwithstanding the preliminary judgment of the CJEU in Joined Cases C 422/19 and C 423/19, which states in par. 55 that it is not necessary that the EU legislature lay down exhaustively and uniformly the exceptions to that fundamental obligation, provided that every debtor is guaranteed to have the possibility, as a general rule, of discharging a payment obligation in cash.

<i>If the value of the banknote tendered is disproportionate compared to the value of the amount to be settled;</i>		X	
<i>If a retailer has no change available;</i>		X	
<i>If there would be not enough change available as a result of that payment for a retailer to carry out its normal daily business transactions;</i>		X	
<i>Any other exception</i>		X	

Please explain.

Cf. answer to question 26 : the use of cash shall be safeguarded throughout the EU as a privacy-preserving means of payment. This is as well the reason why the features of a digital euro shall be as close as possible to physical cash (cf. general comments).

29. *Should there be a provision to require that additional exceptions to the mandatory acceptance principle may be proposed by Member States subject to approval by the European Commission after consulting the ECB?*

- Yes*
- No*
- no opinion*

Please explain.

Cf. answers to questions 26 and 28.

30. *Should there be a provision for administrative sanctions for cash non-acceptance?*

- Yes*
- No*
- no opinion*

Please explain.

31. *Should the legislative proposal confirm the prohibition on surcharges on payments with euro banknotes and coins?*

- Yes*
- No*
- no opinion*

Please explain.

32. *Since the effectiveness of the legal tender status of cash presumes the widespread possibility of having access to it, should there be a provision which aims to guarantee the availability of cash, such as an obligation on Member States to*

adopt rules to ensure sufficient access to cash and report these rules to the Commission and the ECB?

- Yes
- no
- no opinion

Please explain.

5. APPLICATION OF ANTI-MONEY LAUNDERING AND COUNTER TERRORIST FINANCING (AML-CFT) RULES

Intermediaries required to implement AML/CFT rules must conduct due diligence on their clients. These measures need to be performed for example, when a user opens an account, when transactions are carried out, or when there is a suspicion of money laundering or terrorist financing. While specific AML/CFT rules may need to be devised based on the exact design features of a digital euro, general views related to the implications of AML/CFT measures for intermediaries and estimation of compliance benefits/costs are welcome.

42. How various design models of a digital euro would impact the AML/CFT compliance costs of private intermediaries? (1 = 'no impact', 5 = 'very high increase in cost')

<i>Design option</i>	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>Don't know/not applicable</i>
<i>Account-based digital euro, available online¹⁶</i>						
<i>Bearer-based¹⁷ digital euro, available online</i>						
<i>Bearer-based digital euro, available offline</i>						

For each option, please provide quantitative/qualitative evidence or estimates if available.

The AML/CFT compliance cost will depend on the detailed AML/CFT properties of each of those proposed design options. With regard to transaction monitoring, for example, the EDPB's proposal is the complete absence of checks (and not only simplified checks) under a certain threshold of low value transactions, as it is the case for the cash today, while higher value transactions would remain subject to standard controls. This would be best

¹⁶ In an account-based model, payments in digital euro would be initiated by end users but transferred by supervised intermediaries managing accounts on their behalf. In this scenario, AML/CFT requirements are expected to be performed by supervised intermediaries distributing the digital euro.

¹⁷ In a bearer-based model, payments in digital euro would be initiated and transferred by end users directly, without the need of a third party (supervised intermediary) playing a role in the transaction. Supervised intermediaries may be involved in the system, notably for the performance of AML/CFT requirements such as the onboarding of users, in addition to other activities such as the loading digital euro funds into digital euro wallets.

implemented on the bearer-based modality, available offline. This would not be feasible for the account-based modality.

43. Intermediaries will have to perform a series of controls and checks according to AML/CFT requirements. In comparison with existing requirements applying to other means of payments, what would be the specific challenges with digital euro payments to best ensure prevention and combat of money laundering and the financing of terrorism?

The EDPB is of the view that the right balance between data protection and privacy, on one side, and AML/CFT policy objectives, on the other, shall be met. In order to reach this objective, the EDPB proposes the following principle: the introduction of a digital euro shall not alter the AML/CFT risk profile of the current payment system using cash as a widespread means of payment.

Thus, the design of the digital euro shall be crafted in such a way not to make it riskier, nor less risky, than the use of physical cash from an AML/CFT point of view. If riskier, the AML/CFT policy objective would be damaged. If less risky, it would be at the cost of the privacy policy objective. The design of the digital euro would thus benefit to be based on a proper AML/CFT risk assessment study before its introduction.

*44. In case the digital euro provides for a functionality that would allow the user to perform **low-value transactions offline**, what challenges do you think this functionality could generate in the prevention and combat of money laundering and the financing of terrorism?*

Low-value transactions can be considered as low-risk transactions if the overall design of the digital euro is done right (cf. answer to question 43). They can therefore be done without transaction monitoring under a certain threshold, and without upload of the corresponding transaction history from the intermediary. In case unlawful transactions have taken place nevertheless, they would be reidentifiable by the authorities if public prosecution is launched as they would be only pseudonymous. Therefore, this feature doesn't seem to raise much challenge in terms of AML/CFT prevention.

45. In your opinion, how would the risks related to money laundering and terrorism financing of a digital euro allowing the user to perform low-value transactions offline (proximity payments) compare to other payment options listed below?

Please indicate in each line your assessment of the relative risks.

	<i>Low-value offline digital euro transactions less risky</i>	<i>Low-value offline digital euro transactions equally risky</i>	<i>Low-value offline digital euro transactions more risky</i>	<i>Don't know/not applicable</i>
<i>Digital euro online payments</i>				

Cash payments				
Online payments in commercial bank money				

For each option, please provide quantitative/qualitative evidence or estimates if available.

6. PRIVACY AND DATA PROTECTION ASPECTS

The ECB's public consultation on the digital euro indicated that future users of the digital euro see privacy as one of the most important elements. Ensuring an appropriate level of privacy and data protection for the user of a digital euro is important to foster public trust in a digital euro, which underpins its adoption and use. Any processing of personal data must be in line with the Union data protection legislation, including the [GDPR](#)¹⁸ and the [EUDPR](#)¹⁹.

46. Which features could appropriately enhance the privacy and data protection of the digital euro users? Note that these features are without prejudice to the lawful grounds of processing, as specified in Article 6 GDPR and the application of AML requirements, as appropriate.²⁰

Please rate each business case from 1 to 5, 1 standing for 'not appropriate at all' and 5 for 'very appropriate'.

	1	2	3	4	5	Don't know/not applicable
Ability to mask the identity of the payer or the payee to each other ('peer-to-peer pseudonymity')					X	
Ability to mask the identity of the payer or the payee to the other party's intermediary ('intermediary-to-intermediary pseudonymity')					X	

¹⁸ [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC \(General Data Protection Regulation\) \(Text with EEA relevance\)](#)

¹⁹ [Regulation \(EU\) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation \(EC\) No 45/2001 and Decision No 1247/2002/EC \(Text with EEA relevance.\)](#)

²⁰ The processing of personal data is lawful when carried out in accordance with Article 6 GDPR. This includes, for example, the processing of personal data for the performance of a task carried out in the public interest (e.g. AML/CFT requirements) or for the performance of a contract.

<i>Ability to limit the knowledge on the identity of the payer or the payee to the central bank, and/or other third party intermediaries not involved in the transaction</i>			X			
<i>Ability to completely hide the identity of the payer and payee for low-value offline transactions</i>					X	

Advanced privacy enhancing techniques exist in order to reach both privacy and AMF/CFT policy objectives, such as: transferable e-cash solutions²¹, zero knowledge proof, advance hashing, homomorphic encryption, etc. In the same vein, the digital euro shall have a specific AML/CFT and privacy regime (whose properties in both cases will depend on the design options chosen) designed to establish the right balance between those two policy objectives.

Please note that what is at stake with the ability to “hide” the identity of the payer and payee for low value transactions (line 4) is not its pseudonymous nature but the impossibility to track and collect, under a certain threshold, the history of transaction data. Moreover, in order to protect privacy, all the modalities of use of digital euro would be pseudonymised (i.e. not identified but identifiable under request of public prosecution).

47. The Commission has identified a number of potential activities related to digital euro that could entail the lawful processing of personal data by either private intermediaries or central banks in charge of initiating the digital euro transactions and services. How appropriate are those activities for the lawful processing of personal data?

Please rate each activity case from 1 to 5, 1 standing for ‘not appropriate’ and 5 for ‘very appropriate’.

<i>Purposes</i>	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>Don't know/not applicable</i>
<i>Fight against money laundering, organised crime / terrorism</i>			X for intermediaries			
<i>Enforcement of tax rules</i>			X for intermediaries			
<i>Payments settlement purposes</i>			X for the ECB, for the wholesale use			

²¹ See for example Bauer et alii 2020 : <https://eprint.iacr.org/2020/1400.pdf>

<i>Management of operational and security risks</i>				X for intermediaries		
<i>Enforcement of potential holding limits</i>		X possibly for intermediaries				
<i>Additional innovative online services and functionalities</i>	X					
<i>Other, please specify</i>						X

To the extent you deem it necessary, please explain your reasoning and provide quantitative evidence or estimates:

Only the intermediaries are, from a regulatory point of view, in charge of the AML/CFT checks or enforcement of tax rules, which are not in the responsibilities of the ECB. There is no reason the ECB be controller for those purposes. In case the management of security risks needed the operation of personal data, the corresponding data processing shall be done by the intermediaries. The ECB would oversee risks from a (macro)prudential point of view and thus, in an aggregated manner, where data do not qualify as personal data, or they would need to be pseudonymized.

In the same vein, enforcement of potential holding limits could be best entrusted with intermediaries, as it is the case for the regulated savings accounts in France for example in a very satisfactory manner.

With regard to innovative services and functionalities, those shall be based on a contract with the user or on its consent, as it is the case in the PSD2 framework supporting innovation. There is, thus, no need to extract and share data for business purposes in the digital euro infrastructure itself automatically and independently from the decisions and preferences of the final user.

In any case, necessity and proportionality of data processing shall be assessed for each of these use cases under the light of the ECJ case law, and processing carried out will have to comply with the European data protection applicable framework, including the principles of data minimisation and purpose limitation.

48. Should the central bank be able to access personal data for the purposes listed below?

	Yes	No	Don't know/not applicable
Payments settlement purposes			X (see comment)
Operational resilience/security risks assessment and mitigation purposes		X	
AML/CFT		X	
Fraud		X	
Other, please specify			X

To the extent you deem it necessary, please explain your reasoning and provide quantitative evidence or estimates.

Please refer to the comment under question 47. Under GDPR, data processing is governed by the principles of necessity, proportionality, minimisation of data collection. There is no reason the ECB processes personal data of final retail users as a central entity. For them, the liability on AML/CFT, security, fight against fraud etc... shall remain on intermediaries.

As for payment settlement purposes, the EDPB is of the opinion that the ECB shall access the data only for the wholesale uses (clearing and settlement) of the digital euro and not for the retail uses. For the wholesale uses, the data are less likely to be personal.

49. Should users of a digital euro have the possibility to 'opt-in' and allow their personal data and payments transaction data to be used for commercial purposes, for example to receive additional services from intermediaries?

- Yes
- No
- Don't know/no opinion

To the extent you deem it necessary, please explain your reasoning and provide quantitative evidence or estimates.

Comment:

- If the question relates to a "general, one shot" opt-in: such a feature would not be compliant with GDPR or EUDPR as those regulations imply that the personal data

shall be collected for specific and targeted purposes that the user is able to understand, or for a substantial public interest by Union or Member State law. In this respect, the EDPB recalls that, in accordance with the principle of purpose limitation, personal data can only be collected for specified, explicit and legitimate purposes. In addition, a controller that seeks consent for various different purposes shall provide a separate opt-in for each of these purposes, thus allowing users to give specific consent in the meaning of Article 4(11) GDPR. By referring to the broad concept of “commercial purposes”, none of those conditions would be met;

- If the question relates to the possible introduction of digital euro within the scope of the PSD2 : the EDPB does not favour the “account-based” modality of the digital euro but rather the “bearer-based” one, for the reasons described below question 5a. A digital euro spent offline and without tracing of transactions under a specific threshold, means that there will be no reflection of the transactions in an account history. The inclusion within the scope of the PSD2 would thus not be relevant in this perspective.