



EUROPEAN CENTRAL BANK

EUROSYSTEM

CBDC: a new frontier of central bank money

Focus on the digital euro



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Prof. Chiara Zilioli, Director General Legal Services, ECB

Disclaimer

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Overview

- 1 Introduction to the digital euro project
- 2 What is – and what is not - the digital euro?
- 3 Why we need a digital euro?
- 4 State of play of the digital euro project
- 5 Focus on the legal issues
- 6 Focus on the design options
- 7 Focus on monetary policy, financial stability and distribution
- 8 Way forward of the digital euro project

1

Digital euro

What, why, when?

1. Introduction

*“The ECB is working with the national central banks of the euro area to investigate whether to introduce a digital euro. **It would be a central bank digital currency, an electronic equivalent to cash. And it would complement banknotes and coins, giving people an additional choice about how to pay**” (ECB, [Digital euro website](#))*

“My personal conviction is that given the developments we are seeing, not so much in the bitcoin segment but in the stablecoins projects, we'd better be ahead of the curve if that happens [the digital euro] because there is clearly a demand out there that we have to respond to” (Mme Lagarde, [Press Conference](#), 2019)

3. Why do we need a digital euro?



Ensure convertibility at par between CeBM and private money (credibility of two-tiered monetary system) in a digital society and public access to CeBM, despite decline of cash



Monetary anchor function



Protect the European strategic autonomy and monetary sovereignty, avoiding market dominance of extra-EU private providers in the field of digital payments



EU Strategic autonomy

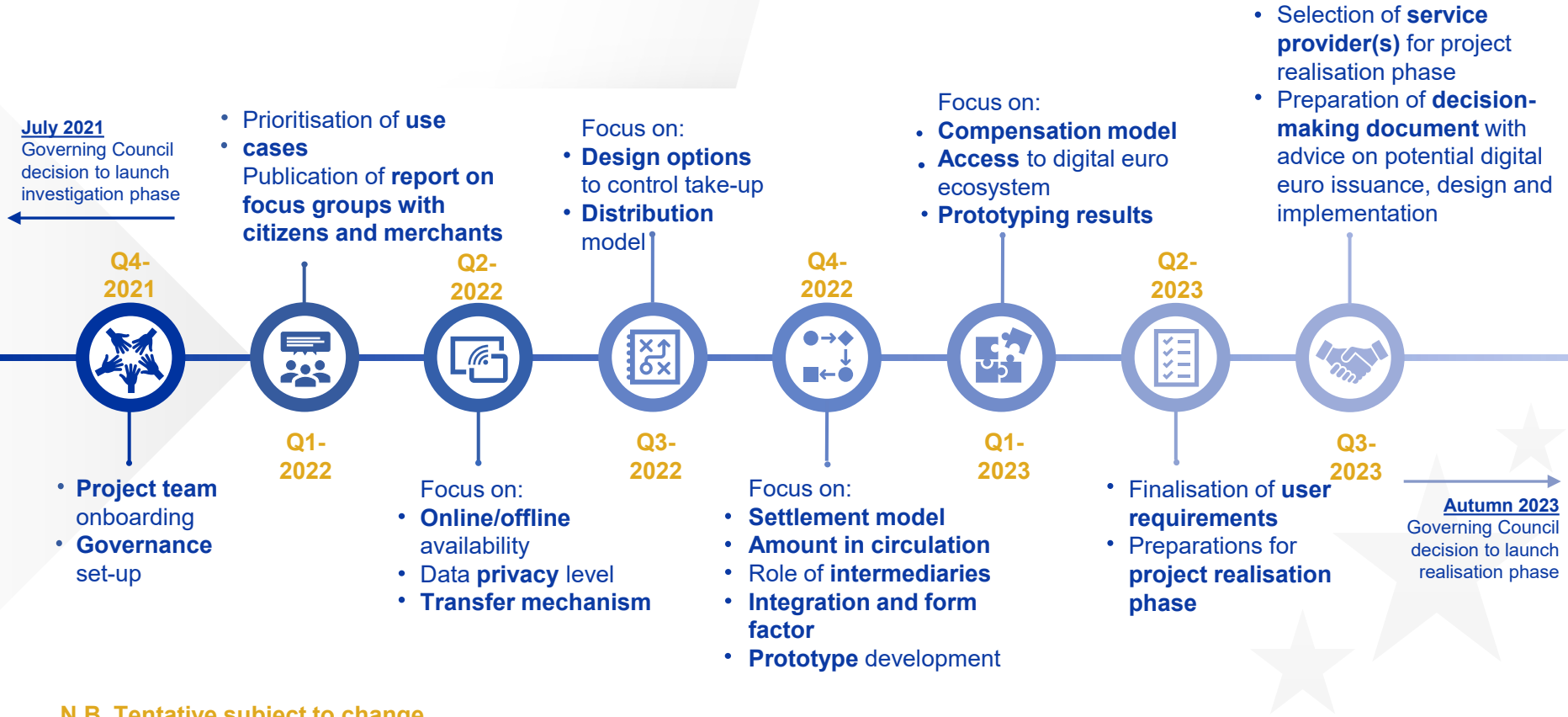


Support the objective of digitalization of the European society and economy in the field of retail payments



Support digitalization

4.1 State of play of the project - Eurosystem



N.B. Tentative subject to change

4.2 State of play of the project – EU Legislator



Start of the digital euro project

Oct 2021

Today

Q2 2023

October 2023

Spring 2024

Autumn 2025

Possible ECB decision to launch the next phase

ECB is in a position to decide: if, when and how much digital euro should be issued



Regular ECON hearings on D€



Regular EG discussions on D€

Publication of the COM proposal(s):

- Digital euro
- Legal tender banknotes/coins

EP elections

Legislative act is adopted

Legislative process

ES Pcy

BE Pcy

HU Pcy

PL Pcy

average length of all ordinary legislative procedures during this EP term: 19 months

2

Digital euro

Focus on the legal issues

5. Legal basis for the ECB/Eurosystem's competences to act

- **Principle of conferral**: competences of the Eurosystem attributed by primary law (Treaties/Statute), not secondary law
- Need for a **robust legal basis** for the Eurosystem to act - concrete design choices and pursued objectives would determine the legal basis
- **Three potential legal basis** for the issuance of the digital euro by the ECB/Eurosystem:
 - Art. 128(1) TFEU/Art. 16 ESCB/ECB Statute: analogy with banknotes
 - Art. 127(2) first indent TFEU/Art. 17 ESCB/ECB Statute: monetary policy mandate
 - Art. 127(2) fourth TFEU/Art. 22 ESCB/ECB Statute: settlement medium

5.1 Art. 128(1) TFEU/Art. 16 ESCB/ECB Statute

- **Art. 128(1) TFEU/Art. 16 ESCB/ECB Statute:** analogy with euro banknotes

Art. 128(1): The European Central Bank shall have the exclusive right to authorise the issue of euro banknotes within the Union. The European Central Bank and the national central banks may issue such notes. 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.'

Art. 16: 'In accordance with Article 128(1) of the TFEU, the Governing Council shall have the exclusive right to authorise the issue of euro banknotes within the Union. The ECB and the national central banks may issue such notes. The banknotes issued by the ECB and the national central banks shall be the only such notes to have the status of legal tender within the Union.'

- **Open questions:**

- What is the meaning of the term: “*banknote*”?
- Does it encompass a digital equivalent or only paper form?

5.2 Art. 127(2) first indent TFEU/Art. 17 ESCB/ECB Statute

- **Art. 127(2) TFEU/Art. 17 ESCB/ECB Statute:** definition and implementation of monetary policy (*stricto sensu*):

Art. 127(2) first indent: *'The basic tasks to be carried out through the ESCB shall be: (...) to define and implement the monetary policy of the Union, (...).'*

Art. 17: *'In order to conduct their operations, the ECB and the national central banks may open accounts for credit institutions, public entities and other market participants and accept assets, including book entry securities, as collateral'.*

- **Open questions:**
 - Potential contrast with Art. 17 ESCB/ECB Statute?
 - Can money be remunerated?

5.3 Art. 127(2) TFEU fourth indent/Art. 22 ESCB/ECB Statute

➤ **Art. 127(2) fourth indent TFEU/Art. 22 ESCB/ECB Statute: settlement medium:**

Art. 127(2) fourth indent: *'The basic tasks to be carried out through the ESCB shall be: (...) to promote the smooth operation of payment systems.'*

Art. 22: *'[T]he ECB and national central banks may provide facilities, and the ECB may make regulations, to ensure efficient and sound clearing and payment systems within the Union and with other countries ...'*

➤ **Open questions:**

- If this is only a settlement medium (and not store of value and unit of account), it is disputable whether legal tender status can be attributed
- Can the term “facilities” include provision of CeBM to the public? Or can it cover only the functioning of the settlement infrastructure, once CeBM has been issued?

5.4 Cumulation of legal bases

➤ Cumulation of legal bases:

- **CJEU Jurisprudence on the cumulation of legal bases:** *“if a measure/instrument simultaneously pursues a number of objectives or has several components, without one being incidental to the other, i.e. when all objectives/components of the measure are of equal importance, then a cumulation of legal bases is supported by the CJEU”* (so-called “centre of gravity” test, Case C-70/88, European Parliament vs Council of the European Communities, para. 12).
- if the digital euro pursues **different objectives** of **equal importance**, **cumulation** of **legal bases** can be considered in accordance with the CJEU jurisprudence;

➤ Open questions:

- Can the digital euro legally be construed as a digital version of banknote *and* a monetary policy instrument? Could this evolve over time (present use, potential future use)?

6. EU legislator's competences to act

- The Commission has announced a **legislative proposal** on a digital euro in **Q2 2023**
- The proposal will concretise in a **EU Regulation** based on **Article 133 TFEU**: *“Without prejudice to the powers of the European Central Bank, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall lay down the **measures necessary for the use of the euro as the single currency**”*
- **EU Legislation** to lay down the **rules for the use of the digital euro** before its potential issuance by the European Central Bank ➔ **regulatory dimension** of monetary policy to guarantee the status of the euro as the single currency (C-422/19 Hessicher Rundfunk, para. 38)
- **Competence of the EU legislator** to regulate legal tender status, data protection and AML/CFT, accessibility, compensation model, sanctions compliance etc

7. Legal tender status to the digital euro

- **Lex monetae**: exclusive power of a sovereign state to attribute legal tender status to a given form of its currency

- **SCOPE: COM Recommendation 2010**: minimum elements of legal tender:
 - **Mandatory acceptance in principle:**
 - CJEU Hessischer Rundfunk: *“it cannot be considered necessary for the use of the euro as the single currency...to impose an absolute obligation to accept those banknotes as a means of payment”*
 - Good-faith exceptions
 - **Acceptance at full value**
 - **Power to discharge from payment obligation**

- Should the **same concept of legal tender that applies to cash** apply also to the digital euro?
Should the **specificities of the digital euro** (e.g. it needs a technological tool to channel the payments – a POS) be taken into account?

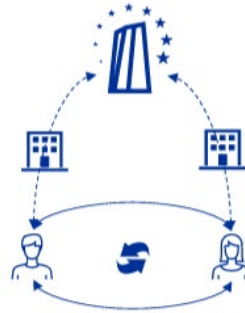
8. Legal nature of the digital euro

Account-based



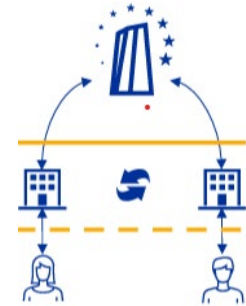
- Liability of central bank
- Rights in personam/contractual rights
- Transfer by assignment

Token-based



- Incorporeal Res
- Rights in rem
- Transfer by possession and/or registration (still to be fully explored)

Tertium genus ?



- Mere central bank liability
- Monetary power for its value
- Right to exchange damaged or torn units (as banknotes today)

9. Data protection and AML/CFT



EU legislation on **data protection (EUDPR/GDPR)** and **AML/CFT (AML Directive)**



Digital euro **public consultation** highlighted **privacy** and **AML/CFT** as **key concerns**



Digital euro infrastructure is to enable **intermediaries** to fulfil their **data protection** and **AML/CFT regulatory obligations**



central bank

Central banks not interested in the use of **personal data** for **commercial purposes**



Full anonymity and **full transparency of personal data** to **central bank** are **not** to be pursued → limited **data transparent** to **intermediaries** for customer onboarding and AML/CFT purposes, as is the case for electronic payments today

10. Competition law aspects



Eurosystem in **pursuing public tasks** (ensuring availability of CeBM to the public, monetary policy broad sense, promoting smooth operation of payment systems) is **not subject to Articles 101-102 TFEU** (restrictive agreements and abuse of dominant position) but to the “**open market economy in free competition**” principle



The **issuance of digital euro** is **not** an **economic activity**, as defined by the CJEU therefore the Eurosystem, and the ECB is **not an “undertaking”**, in the meaning of the TFEU



Digital euro to **foster competition in the retail payment markets** by allowing distribution of digital euro - in principle - to all PSPs (unless posing a major threat for the infrastructure)

3

Digital euro


Focus on the design options

11. Governing Council approved foundational design choices

Online / Offline

Develop an **offline peer-to-peer validated solution** 

Develop an **online solution validated by a third-party** 

Exclude the development of an **online peer-to-peer validated solution** for the first releases (too experimental) 

Privacy principles

General



- Respect personal data
- Follow highest possible level of privacy

Intermediaries



- See transaction data needed for AML/CFT
- Excl. lower value payments from AML/CFT checks (→ co-legislator)

Eurosystem



- Minimise dealing with personal data as much as possible
- Use privacy-enhancing techniques

Tools to control amount in circulation

Holding limit options



- Digital euro holding limit with excess amount shifted to commercial bank account (“waterfall”)
- Different limits for online and offline use
- Short deviations allowed

12. Programmable money vs conditional payments

Conditional payments: payments that are instructed automatically when pre-defined conditions are met (see [Digital Euro glossary](#))

Programmable money ≠ conditional payments:


Designing a **digital euro as programmable money**, intended as units of digital euro that can only be used for buying specific types of goods and/or services or only within a certain period/geography, **would not be in line with the guiding principles of the digital euro** endorsed by the Governing Council (see [speech](#) by Mr Panetta and [first progress report](#))

Supervised intermediaries are best placed to develop conditional payment services

13. Interoperability

- **Interoperability:**
 - transferability of digital euro via different systems and applications
 - fungibility with other forms of the euro currency (banknotes and coins)
 - convertibility with other CBDCs

- The **Eurosystem** owns and operates **settlement services** that are already **multicurrency**:
 - TARGET-2 Securities ➡ settlement of euro and Danish krona securities transactions;
 - TIPS ➡ settlement of euro and Swedish krona instant payment transactions

-  TIPS [Cross-currency project](#) with Sveriges Riksbank

- Main legal challenges:
 - **Governance** depending on the operational model (e.g. single system, interlinked, compatible model)
 - **Different jurisdictions** (potentially different AML, Data protection law, civil provisions)
 - Ensuring **final settlement/settlement finality**
 - Definition of **liability regime** and **Intellectual Property Rights**

4

Digital euro

Focus on monetary policy,
financial stability and
distribution

10. Potential impact on monetary policy and financial stability



STABILITY

The ECB will design a digital euro in ways to **avoid undue risks to the monetary policy transmission and financial system**

Potential negative effects on the resilience of the banking sector should be mitigated to **avoid knock-on consequences** for:



- **Provision of credit** to corporations and private individuals
- **Resilience of the banking sector** if too many deposits are shifted to digital euro

Potential **mitigating measures**:



- **Holding cap** per person (e.g. €3,000)
- **Funding and defunding** of digital euro holdings via **commercial bank accounts**
- Relying on **regulated entities** in the **distribution**

11. Role of the supervised intermediaries in the distribution



Intermediaries (Payment Service Providers) will play a **key role** in **distributing** the **digital euro**

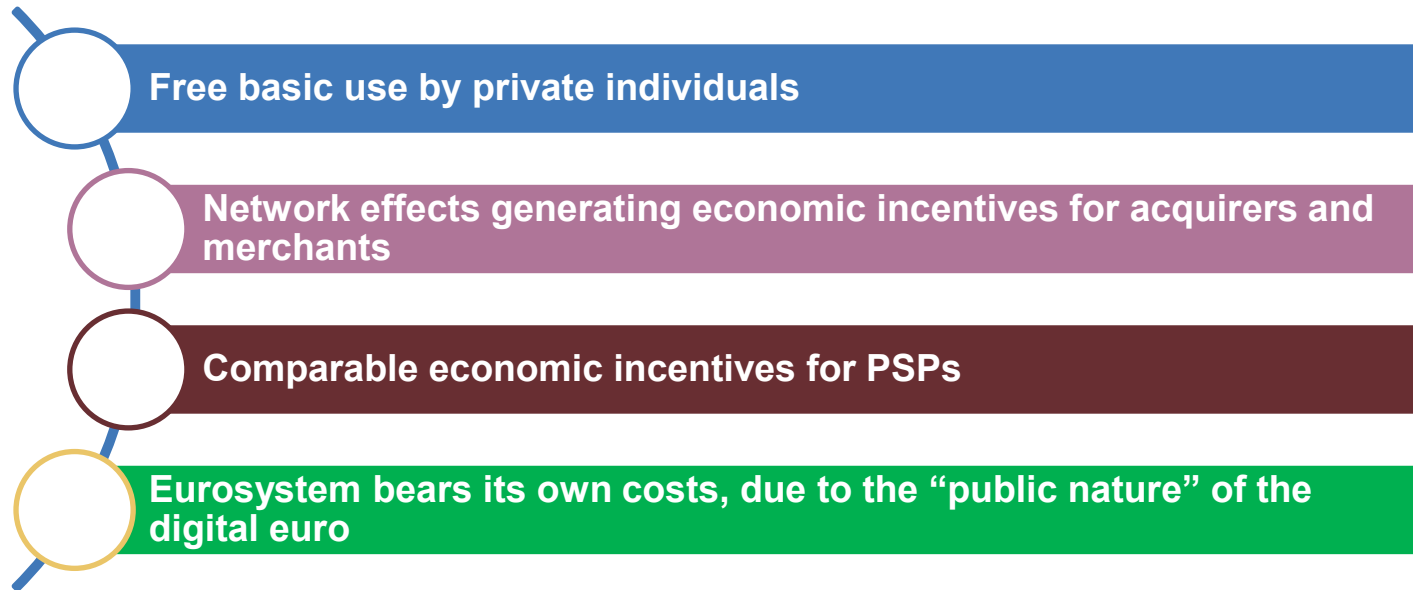
The Eurosystem is considering a **payment scheme approach** → establishing a set of common **rules, standards and procedures** to:



- facilitate a **homogenous and standardised use of digital euro** across the euro area
- ensure **pan euro area reach**
- respect the **role of supervised intermediaries vis-à-vis end-users** and offers room for their **innovation in the added-value services**
- support market participants in **offering payment services on a European scale**

11. Compensation model

➤ Proposed core principles:

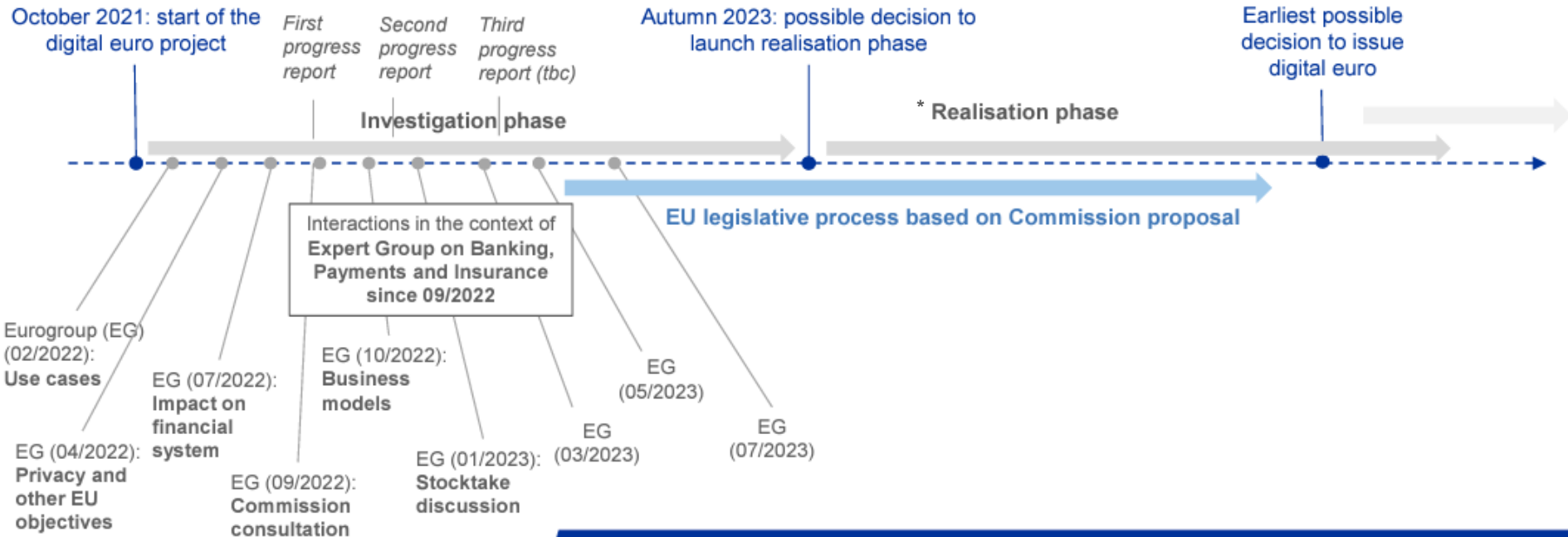


5

Digital euro

Way forward

8. Way forward for the digital euro project





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Thank you for
your attention!

Relevant links:

- [Report on a digital euro](#)
- [Key pages for professional use](#)
- [Digital euro governance and stakeholders](#)
- [Compensation model](#)