

Piero Cipollone

Member of the Executive Board

Mr Thierry Breton
Commissioner for Internal Market
European Commission
Rue de la Loi 200
1049 BRUSSELS
BELGIUM

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Feedback on commitments offered by Apple over access restrictions to near-field communication technology

Dear Honourable Commissioner, dear Thierry,

The Eurosystem recognises that promoting competition and a level playing field is crucial for fostering efficiency and innovation in the European payments market.¹ Therefore, it is important to address limitations to competition so that the wider payment ecosystem can evolve, innovate and provide competing payment solutions to European consumers.

Against this background, we welcome the European Commission's recent market test of the commitments offered by Apple to address the Commission's competition concerns over restricted access to the near-field communication (NFC) technology used to make in-store contactless payments with mobile devices. Finding an effective response to these concerns would support competition, foster innovation and increase choice for consumers with mobile wallets on their iPhones.

As the Commission's initiative could have direct implications for the digital euro project, in this context allow me to share some observations related to Apple's proposal.

We note that Apple's proposed commitments would not give third parties full access to the secure element (SE), but only allow for the usage of Host Card Emulation (HCE). In comparison with providing full access to the SE, this proposal is expected to result in a user experience that is not at par with the user experience offered by

¹ See the Eurosystem's Retail Payments Strategy: <https://www.ecb.europa.eu/pub/pdf/other/ecb.eurosystemretailpaymentsstrategy~5a74eb9ac1.en.pdf>

Address

European Central Bank
Sonnemannstrasse 20
60314 Frankfurt am Main
Germany

Postal address

European Central Bank
60640 Frankfurt am Main
Germany

Tel.: +49 69 1344 0
Website: www.ecb.europa.eu

ApplePay when it comes to authentication and transaction speed.² This is why we believe that the current proposed commitments fall short of ensuring a truly equal level playing field for a third-party payment solution in terms of end-user experience for in-store payments with iOS smart phones. If the proposed commitments would also be applicable to a potential digital euro, they would not, per se, guarantee that digital euro payments made using iPhones were seamless and user-friendly.

Crucially, access to the SE is vital for mobile device based offline digital euro payments.^{3 4} Therefore, Apple's proposed commitments, which do not provide full access to the SE of iOS smart phones, would not facilitate offline payments with digital euro on iPhones.

We understand that the Commission's antitrust investigation, and Apple's proposed commitments on access to NFC technology, are limited to in-store payments with iOS smart phones. We want to point out that this leaves unaddressed the issue of restricted access to NFC technology in several other payment scenarios:

- For the use case of in-store payments, wearables such as Apple Watches are excluded. This would mean that payments made using wearables would always go through ApplePay and not a third-party payment app.
- For the use case of in-store payments, merchant acceptance is not included in the proposed commitments. As a result, the ability of merchants to accept payments with Apple devices other than through ApplePay might be limited.
- The use case of e-commerce is entirely excluded. This could imply that third-party payment apps could not offer a user experience at par with ApplePay in e-commerce and m-commerce instances where SE access is necessary in order to check out directly without being redirected to a separate app.
- The use case of person-to-person payments is entirely excluded. We note that this use case is crucial for the digital euro as recognised in the proposal for a regulation on the establishment of the digital euro.

I would like to take this opportunity to express our appreciation for other Commission initiatives which have implications for the European retail payment ecosystem. Specifically, we commend the efforts made in relation to the Digital Markets Act (DMA), which can foster further payment innovation and promote competition by removing key barriers.⁵ However, we note that the DMA would not allow access to the SE for all potential digital euro users because it applies only to companies that the Commission designates as gatekeepers and to those

² For example, the number of transactions that could be carried out when an iPhone is offline (not to be confused with offline payments in digital euro) would be limited if access to the SE remains restricted. Moreover, transaction speed would be lower because some quick payments (e.g. ApplePay's express mode) relies on the SE.

³ For a bearer instrument (i.e. a solution without third party involvement), the hardware needs to be tamper-proof or at least tamper-resistant. Currently, SE is the technology that offers this.

⁴ The proposed regulation on the establishment of the digital euro stipulates that both the offline and online modality of digital euro would be available in the first issuance of digital euro.

⁵ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (OJ L 265, 12.10.2022, p. 1).

services that the Commission designates as core platform services.⁶ This currently means that SE access would not be granted for mobile phones produced by other companies, mobile phones running on different operating systems, and wearables and tablets running on different operating systems.

Against this background, we are pleased that the importance of access to the NFC features and to the SE was considered in the proposed digital euro regulation. Article 33 of the proposed digital euro regulation requires original equipment manufacturers and providers of electronic communication services to make the SE in their devices accessible to front-end service providers on fair, reasonable and non-discriminatory (FRAND) terms. We believe that such access should be open and not dependent on other mobile operating system applications. This would help ensuring that digital euro payments on mobile devices are secure, seamless, and user-friendly.⁷

Therefore, we reiterate the importance of being highly ambitious in the implementation of Article 33 – and subsequent delegated acts by the Commission – to achieve non-discriminatory access. This is essential for digital euro online payments not being disadvantaged in terms of user experience and for facilitating digital euro offline payments on mobile devices.^{8 9} It should also guarantee that there is sufficient unused storage on the SE so that the SE can function as the local storage device for the digital euro offline solution.

Let me conclude by reaffirming our support for any additional steps that the Commission may take within the existing regulatory framework to support a competitive European payments market. The ECB stands ready to lend its expertise to Commission services as they continue to explore possible steps aimed at promoting the evolution and innovation within the European payment ecosystem, as well as measures seeking to ensure that digital euro online and offline payments are seamless, secure and user-friendly.

Yours sincerely,

Piero Cipollone

⁶ We understand that, as regards companies, only Apple, Alphabet, Meta, Amazon, Microsoft and ByteDance are currently designated gatekeepers and as regards mobile phone operating systems, only iOS and Google Android are designated as core platform services under the DMA.

⁷ See the Opinion of the European Central Bank of 31 October 2023 on the digital euro (CON/2023/34) (OJ C, C/2024/669, 12.1.2024), available at: https://www.ecb.europa.eu/pub/pdf/legal/ecb.leg_con_2023_34.en.pdf

⁸ Moreover, following the adoption of the digital euro regulation, concerted efforts will be needed to streamline and expedite the negotiations between OEMs, providers of electronic communication services and front-end providers to agree on FRAND terms.

⁹ An effective implementation of Article 33 on FRAND access to a series of mobile devices is of paramount importance for the offline variant of the digital euro. While we are exploring the possibility of using offline digital euro with other physical devices, the ability to make such payments using mobile phones is essential for a good user experience.