The Impact of Digital Euro on the European Finance Legal Framework

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Abstract

Digitalization is overtaking fiercely our environment, reality becoming progressively dependent on digital transformations. The consumer's lifestyle, particularly the chosen payment method at the time of purchase, is significantly impacted by this digital transition. Therefore, it is necessary that financial institutions adapt to this emerging reality.

As time progresses, payments are becoming more digital, with a marked shift away from cash transactions. This trend towards electronic transactions arouse concerns regarding privacy and data protection, as these transactions are conducted through digital payment systems. In response, the European Central Bank proposes the creation and implementation of a digital currency issued by them, arguing that this digital euro would facilitate the development of pan-European payment systems and ensure the availability of a cross-border digital financial instrument.

Therefore, this paper aims to examine the implications of implementing this digital currency, named digital euro, within the European monetary system, as well as its impact on the legal framework governing the banking and financial sectors in Europe.

Keywords: *monetary policy; digital currencies; monetary convergence; digitalization; electronic transactions; book money.*

Introduction

Over time, the monetary system has encountered several pivotal moments that have resulted in its reconfiguration, and the current situation suggests that we are approaching another such juncture. Initially, money was minted by the sovereign authority from precious metals. The monetary system experienced its first major transformation when, driven by significant economic growth, there was a gradual transition from metal coins to printed banknotes. Because of the absence of strict regulation regarding the issuance of currency—both by the state and private banking institutions, a series of financial crises ensued.

In response to the problems, European countries gradually introduced the banknote monopoly of the central banks from around the middle of the nineteenth

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century. This was the second monetary turning point.[3] However, the attempt to tie monetary value to gold standard proved unsuccessful due to the unprecedented growth pressure resulting from industrialisation and urbanisation.[4] The period from 1944 to 1971 was shaped by the Bretton Woods Agreement, which was adopted in response to the economic imbalances caused by World War II. This agreement established a system wherein the U.S. dollar was connected to gold, and all other currencies were linked to the dollar, to create an international monetary system that would ensure exchange rate stability.[5] With the abandonment of gold convertibility by U.S. authorities in 1971 led to the evolution of the international monetary system towards a regime of flexible exchange rates, in which currency values were no longer fixed but fluctuated based on market-driven supply and demand.

In terms of the form in which most of the money exists today, we identify a third phase. This phase is characterized by the coexistence of physical cash and book money, the latter referring to non-physical funds held in bank accounts and deposits. From a legal standpoint, the sums of money deposited in a bank constitute a claim by the client against the credit institution with which they have entered a contract. Furthermore, we concur with the doctrinal perspective that book money can be regarded as a hybrid of traditional (cash) and digital format, both in terms of its form and the methods available for conducting transactions (such as bank transfers, card payments, etc.).[6]

Based on the above, we highlight the fact that over the past three and a half centuries, the structural composition of the money supply has undergone three epochal turning points, and it is currently in the process of developing a fourth, represented by emerging digital currencies.

Section I: The Introduction of the Euro Currency. The Monetary Policy of the European Union

The Werner Plan and the Introduction of the Euro Currency

Given the changes in the European landscape, there is a need for hegemony at the level of the European monetary and financial system. To better understand the reasons behind the creation of the digital currency known as the digital euro, we need to refer to previous events, as there is a historical precedent in this context. Firstly, it is important to highlight that discussions about the potential creation of a European economy and a monetary union have been ongoing since the early

[3] Joseph Huber, The Monetary Turning Point. From Bank Money to Central Bank Digital Currency (CBDC), Ed. Palgrave Macmillan, (Berlin, Germany, 2023), p. 3.
[4] Ibidem.
[5] Federal Reserve History, Creation of the Bretton Wood System, July 1944, available online at: https://www.federalreservehistory.org/essays/bretton-woods-created, accessed at 04.05.2024.
[6] For more detail see: Leo Kriese, Central Bank Digital Currency. A Technical, Legal and Economic Analysis, (Ed. Springer, Frankfurt am Main, Germany, 2023), pp. 4-5.

establishment of the community. However, until the late 1960s, these discussions remained at the level of theories and hypotheses.

Thus, after the completion of the customs union in 1968, the leaders of the European Economic Community (EEC) were in search of a new emblematic project. The Economic and Monetary Union (EMU) was part of the famous triptych of completion, expansion, and deepening. The EEC leaders agreed to establish an ad-hoc group of experts, chaired by Luxembourg Prime Minister Pierre Werner, to develop a phased plan for the creation of an EMU.

The initial discussions regarding the means to achieve economic and monetary union within the EEC set up two camps—monetarists and economists—who had differing visions and strategies, fiercely contested. The so-called 'economists' argued that full monetary integration, including the eventual creation of a single currency, could only occur within the EEC once the economies of the future currency bloc had fully converged. Monetarists contended that the introduction of a single currency in the EEC would force member state economies to align, thus creating a viable monetary area.[7]

Thus, these initial efforts towards monetary integration in the EEC were outlined on October 8, 1970, through the Report to the Council and the European Commission on the phased realization of economic and monetary union within the Community, also known as the Werner Report. The objective was to create the necessary framework for an area within which goods and services, people and capital could move freely without competitive distortions, without thereby giving rise to structural changes or regional imbalances.[8] The result was the introduction of the euro on January 1, 1999, when 11 member states fixed their exchange rates and adopted a single monetary policy managed by the European Central Bank, launching the euro as their new common currency. For the first three years, the currency was used for electronic transactions and financial markets, with euro coins and banknotes entering circulation in 2002.[9]

Through this unionist reminiscences addressed, we observe a continual desire to create a unified financial system that provides a framework where participants in the monetary circuit can operate freely without restrictions. Thus, the single currency discussed by experts in the 1960s and 1970s came into existence at the end of the 20th century in the form it would operate in three years later—cash.

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[7] Fabian Amtenbrink, Christoph Herrmann, The EU Law of Economic and Monetary, (Ed. Union-Oxford University Press, United Kingdom, 2020), p. 22.

[8] Council-Comission of teh European Communities, Report to the Councit and the Commission on the realisation by stages of Economic and Monetaru Union in the Commuity, Werner Report, Supplement to Bulletin 11-1970 of the Eruopean Communities, (Luxembrug, 9 October 1970), p. 9 https://ec.europa.eu/economy_finance /publications/pages/publication6142_en.pdf.

[9] EU, Istoricul și scopul monedei euro, available online at: https://european-union.europa.eu/institutions-law-budget/, accessed at 01.05.2024.

Monetary Policy of the European Union

Lato sensu, we assert that the monetary policy of the EU is characterized by centralized monetary policy under the aegis of the European Central Bank and the decentralized fiscal policies of the member states. We note that within the monetary system, there are a number of mechanisms intended to coordinate the previously mentioned economic policies with the aim of ensuring stability in the Eurozone. According to Chapter 2, Monetary Policy, Title VIII of the TFEU[10], the primary objective of the European System of Central Banks (ESCB) is to maintain price stability. Without prejudice to this objective, the ESCB supports the general economic policies in the Union to contribute to achieving the Union's goals as defined in Article 3 of the Treaty on European Union. The ESCB operates in accordance with the principle of an open market economy where competition is free, conducive to the efficient allocation of resources and adhering to the principles established in Article 119: stable prices, sound public finances and monetary conditions, as well as a stable balance of prices.

The main motivation for creating a digital currency under the control of the ECB, known as Central Bank Digital Currency (CBDC), is to preserve what is termed monetary sovereignty. To regain monetary sovereignty and effective monetary policy, it is indispensable not only to have 1:1 coverage of new money surrogates, but a coverage the greater part of which consists of CBDC and bank money according to the composition of M1.

To regain monetary sovereignty and implement an effective monetary policy, it is essential not only to have a 1:1 coverage of the new monetary substitutes but also to ensure that a significant portion of this coverage consists of CBDC[11] and scriptural money according to the M1 composition.[12] Stricto sensu, M1[13] represents the money supply that includes currency, demand deposits, and other liquid deposits, including savings deposits and printed money.

Hence, we conclude that the introduction of a CBDC, especially a retail one, will impact numerous aspects of the financial-banking system since CBDC is not simply a digitalization of cash. It presents negative effects on the central bank's monetary policy functions and the dynamics of the payment services market.[14]

[10] OJEU serie C nr. 326/47, 26.10.2012.

[11] CBDC: Central Bank Digital Currency.

[12] Joseph Huber, The Monetary Turning Point. From Bank Money to Central Bank Digital Currency (CBDC), (Ed. Palgrave Macmillan, Berlin, Germany, 2023), p. 146

[13] M1: comprises currency in circulation (banknotes and coins) and balances that can immediately be converted into currency or used for cashless payments (overnight deposits). ECB, Manual on MFI balance sheet statistics, Februarie 2024, p. 172, available online at: https://www.ecb.europa.eu/pub/pdf/other/ecb.manualmfibalance sheetstatistics

[14] Filippo Zatti, Rosa G. Barresi, Digital Assets and the Law. Fiat Money in the era of digital currency, Ed. Routledge, (New Yory, 2024), cap. 19 Central Bank Digital Currencies. What Future for Banks and Other Financial Intermediaries.

However, most central banks expect CBDCs to enhance the effectiveness of monetary policy and thus contribute to increasing the stability and resilience of the monetary-financial system. The digital currency in question should, in turn, strengthen general confidence in the monetary system and central banks.[15]

In this context, monetary sovereignty is a significant concept, with references to it being omnipresent in public debate since the advent of crypto assets.[16] Regarding the preservation of monetary sovereignty, European governors believe that a digital euro will be key to this process. The finance ministries of Germany and France assert that a digital euro will be essential for maintaining our fiscal and monetary sovereignty. It represents a relevant alternative to the development of private crypto assets as a means of payment or the development of foreign CBDCs.[17]

Section II: The Relationship between Traditional Money (Cash) and Digital Money

Currently, technological innovations, the digitization of banking services and financial instruments, as well as the rapid development of cryptocurrency networks (virtual currencies), are increasingly influencing the behaviour of European citizens. This has created an institutional need to adapt to these new behaviours and realities. Moreover, all these factors indicate that the international monetary system is approaching a new pivotal point.

In recent years, we have observed a trend in the Eurozone regarding the payment methods used by its citizens. While in 2016 cash was the primary payment method for 79% of respondents in the SPACE[18] survey, by 2021 the percentage of those who cited cash as their main method had decreased to 59%—a 20% drop. On the other hand, there has been a significant increase in card payments. In 2016, only 19% used cards as their primary payment method, but the 2021 study shows a notable rise, with 34% preferring cards. Furthermore, card payments are increasingly dominating transactions over 50 euros made at points of sale. This reflects a trend among European citizens to manage their financial assets—especially larger amounts—using digital wallets, banking apps, or other digital means. Although cash remains the primary payment method, we note a downward trend within the Eurozone. This aspect is closely linked to the growing preference of the population for electronic payment methods as substitutes for cash transactions.

[15] Joseph Huber, Ibidem, p. 125.
[16] Ibidem.
[17] Ministère de l'Économie, des Finances et de la Relance, 'N° 1232-Common Statement of the Finance Ministries of Germany and France to the Digital Euro', minefi. hosting.augure.com, July 2021.
[18] European Central Bank, Study on the payment attitudes of consumers in the euro area (SPACE), available online at: https://www.ecb.europa.eu/stats/. accessed at 04.05.2024.

In addition to the decline in cash payments, another component of the overall picture indicating the turning point we are at is the accelerated growth of Distributed Ledger Technology (DLT), which enables the decentralization of electronic transactions. One of its forms is blockchain technology, responsible for managing cryptocurrency transactions. Unlike the traditional monetary system where the bank is most often an intermediary and guarantor of transactions between parties, this technology allows for direct exchange between digital entities (e.g., cryptocurrencies) without the need for a third party.[19]

But what exactly is a virtual currency?

"Virtual currency"[20] was initially defined in one of the European Central Bank's (ECB) publications as a type of unregulated digital currency that is issued and typically controlled by its developers and used and accepted by members of a specific virtual community.[21] This definition was later revised by the ECB due to developments in the field of virtual currencies over the two and a half years following the initial study, as well as the ambiguous terms of the original definition. The ECB has since moved away from describing "virtual currency" as an unregulated digital currency, opting instead to define it as a digital representation of value.[22]

Depending on their interaction with traditional money and the real economy, different types of virtual currency schemes have been identified, among which we focus on bidirectional schemes. Bidirectional virtual currency schemes generally have flows of inflows and outflows based on conversion rates for buying and selling virtual currency, which can then be used to purchase virtual or real goods and services.[23] Among these, bidirectional virtual currency schemes that are

[19] European Central Bank, The economics of central bank digital currency, Working Papper Series, p. 11.

[20] The phenomenon has raised concerns within the European Union, even though the use of virtual currency schemes is less prevalent in Europe than in North America or Southeast Asia. The European Central Bank has conducted successive studies on this topic, aiming to identify the risks these payment and money transfer schemes pose to European financial stability. The first study (European Central Bank, Virtual currency schemes, October 2012) described virtual currency schemes in terms sufficiently ambiguous to necessitate a second study (European Central Bank, Virtual currency schemes - a further analysis, February 2015) to clarify the concepts.

[21] European Central Bank, Virtual currency schemes, 2012, p. 5. The first study by the European Central Bank discussed virtual "currency" in terms of its similarity to money and its existence within its own payment scheme dedicated to that "currency" (p. 9), characterizing virtual "currency" as a new form of digital currency (p. 11).

[22] European Central Bank, Virtual currency schemes - a further analysis, 2015, p. 4.

[23] European Central Bank, Virtual currency schemes, 2012, pp. 5, 13-16.

economically closest to traditional financial systems are represented by cases like Bitcoin.[24]

It is worth mentioning the main difference between cash and scriptural money, which lies in how they are created. While scriptural money is created and guaranteed by private commercial banks through the establishment of a bank deposit or the granting of credit in the name of the applicant,[25] cash represents public money created and guaranteed by a public institution, specifically the Central Bank.[26]

Regarding digital currency, it can be issued both by a public authority—such as the digital euro—and by a private entity, such as stablecoins or cryptocurrencies. The primary difference arising from the aforementioned taxonomy is the level of volatility. Although transactions with the digital currency Bitcoin, which has the highest recognition and trust, reached a historic high in April of the current year,[27] Bitcoin remains subject to high price volatility, making it unsuitable as a means of payment.[28] Additionally, stablecoins are a type of cryptocurrency whose value is pegged to another asset (a currency issued by a central bank, commodities, other cryptocurrencies, etc.) to maintain a stable and constant value. Despite their apparent stability, the failure of major projects such as the stablecoin Terra shows that investor confidence in such arrangements can deteriorate rapidly, which also affects other stablecoins.[29] The accelerated growth in the use of digital currencies as means of payment tends to challenge the banks' monopoly on money issuance. To maintain this monopoly, an increasing number of central banks around the world[30] are considering introducing their own regulated digital currency.

[24] Lucian Bercea, "Preţul constă într-o sumă de bani." De la moneda de cont la "moneda" virtuală (şi înapoi), (Revista Română de Drept Privat, Ed. Universul Juridic, 2017), p. 66

[25] Leo Kriese, op. cit., p. 5.

[26] For more detail see: European Central Bank, Why we need the digital euro?, (2024), available online at: https://www.ecb.europa.eu/euro/digital_euro/why-we-need-it.ro.htm, accessed at 07.05.2024.

[27] BTC recorded over 926,000 transactions on April 23, surpassing the previous peak of over 731,000 transactions reached in December 2023. For more details see Bitcoin Transactions Per Day (I:BTPD), available online at https://ycharts.com/indicators /bitcoin_transactions_per_day, accessed la data de 23.04.2024.

[28] For more details see: European Central Bank, The economics of central bank digital currency, Working Papper Series.

[29] For more details see: European Central Bank, The economics of central bank digital currency, Working Papper Series, No 2713 / (August 2022), available online at: https://www.ecb.europa.eu/pub/pdf/.

[30] Leo Kriese, op. cit., p. 164

Section III: Digital euro

In the following section, we will focus on the digital euro project, the European Central Bank's response to the socio-economic changes generated by the digitization, as well as the threat of alternative means of payment such as alter-coins.

The euro is currently present in three forms: central bank reserves, bank money (in the form of deposits), and physical money. The emergence of the digital euro currency represents a fundamental change to these existing forms.

The term euro-digital was first used in 2015, but the idea has been discussed before. A proper definition of it does not exist, but in the doctrine it is estimated that the digital currency issued by the central bank (CBDC) has the following attributes/features: falls under the competence of the ECB such as cash and reserves of the bank, so the CBDC user is established a claim on the central bank; it is digital, it is based on a form of the electronic register; it is expressed in national currency; it is intended to make payments and be a deposit of value.

The European Central Bank has based its pan-European digital currency project on the following pillars: Strengthening/consolidating public money within the European financial system, maintaining monetary sovereignty, preserving the privacy of beneficiaries and reducing market imperfections.

The new digital currency would be available free of charge to all euro area citizens and businesses for any digital payments. Moreover, digital euro transactions could be carried out both online and offline, ensuring in the latter case a confidentiality similar to that of cash[31]. The configuration of a digital wallet could be done at a private commercial bank as well as at a designated public authority, and could be fed with cash or scriptural money, according to the citizen's preferences.

In order to prevent excessive outflows from commercial bank deposits, the ECB suggested through Fabio Panetta, a member of the Bank's Executive Board, to set a limit of around 3000 euros for the digital euro wallet[32]. However, the ECB notes the possibility for users to exceed this limit by associating their digital wallet with their bank account[33]. Digital wallet means an electronic identification way that allows the user to store, to safely manage and validate the personal identification data and the electronic attestations of the attributes in order to provide them to the beneficiaries and other users of the European Digital identity

[31] European Central Bank, What would a digital euro currency be?, (2024), available online at: https://www.ecb.europa.eu/euro/digital_euro/features/, accessed at 08.05.2024.

[32] CECCAR, Fabio Panetta (ECB) suggests a limit of 3,000 euros for digital cash, CECCAR Business Magazine, (10 February 2021), available online at: https://www.ceccarbusinessmagazine.ro/fabio-panetta-bce, accessed at 08.05.2024.

[33] European Central Bank, How would a digital euro currency work?, 2024, available online at: https://www.ecb.europa.eu/euro/digital_euro/how-it-works/html/index.ro.html accessed on 07.05.2024.

Wallets and to sign by means of qualified electronic signatures or to seal by means of qualified electronic seals.[34]

The digital wallet will enable the user to share personal data, components of digital identity, in a secure and convenient manner to access public and private services[35].

The digital euro project has sparked a series of reactions, with many specialists in the field opining on the possible consequences - positive and negative - that the implementation of the digital currency could have on the financial and banking system in the euro area. We will focus on some of these arguments.

Pro arguments	Counter arguments
Public money are guaranteed by the central bank, which gives them greater security compared to private money managed by commercial banks.	The digital euro has the potential to affect banks or the monetary system, as a whole (sovereign money). It could also exacerbate/amplify a financial crisis.[36] These would also be caused, among other things, by a fulminating increase of people who decide to convert their private money into euro-digital.
The ECB's digital currency has the great advantage of eliminating intermediaries and therefore making financial transactions less expensive, favouring citizens who use digital public money.[37]	The digital euro could make it harder to allocate credit from the real economy, which could have an impact on economic growth and welfare.[38]
Strengthening monetary sovereignty. The digital euro would support Europe's strategic autonomy and monetary sovereignty, making the payments landscape more competitive and resilient for non-European payment providers.[39]	To access digital euro, the user needs a smartphone and/or digital wallets, which could create problems for people who are elderly or[40] unfamiliar with the technology.

[34] See Regulation amending Regulation (EU) No 910/2014 as regards the establishment of the European Digital identity Framework, series LEX, NO 2318, 2021/0136 (COD), Article 1, paragraph (3), letter (j), item 42.

[35] The European Digital Identity Regulation, available online at https://www.european-digital-identity-regulation.com/, accessed at 12.05.2024.

[36] Leo Kriese, op. cit., p. 164

[37] Filippo Zatti, Rosa G. Barresi, op. cit., cap. 2.4.: CBDC Opportunities.

[38] Leo Kriese, op. cit., p. 164

[39] European Central Bank, Why do we need a digital euro currency?, 2024, available online at: https://www.ecb.europa.eu/euro/digital_euro/why-we-need-it.ro.htm, accessed on 07.05.2024.

[40] Filippo Zatti, Rosa G. Barresi, op. cit., cap. 2: The Technological Factor in the Conception of Central Bank Digital Currencies.

Pro arguments	Counter arguments
Financial inclusion. Euro-digital is designed to reach all those who do not have access to cashless payment transactions because they do not have a bank account.[41]	If euro-digital were implemented based on centralized technology, the risk of cyber attacks would be very high.[42]
Reducing cash costs (production, distribution, transport and destruction)[43]	Undermining private life/privacy. Some authors argue[44] that central banks have a number of priorities that could ultimately undermine privacy, such as the prevention of financial system crimes, geopolitical concerns and innovation in the private sector. Rennie and Steele (2021) further states that current CBDC models pose a deconfidentiality risk that could materialize in the loss of anonymity, loss of freedom, loss of individual control and loss of legal control.

The choice of primary Union law to be used as the basis for issuance will depend on the design of the digital euro and the purpose for which it is issued. Thus, if the digital euro were issued as a monetary policy instrument, similar to central bank reserves and accessible only to central bank counterparties, then the Eurosystem could rely, as a legal basis, on Article 127(2) TFEU, in conjunction with the first sentence of Article 20 of the Statute of the European System of Central banks (ESCB).

If, instead, the digital euro were made available to households and other private entities through accounts held with the Eurosystem, it could rely, as a legal basis, on Article 127(2) TFEU, in conjunction with Article 17 of the Statute of the ESCB (which, however, does not provide a legal basis, it cannot serve as a single legal basis).

If the digital euro were issued as a means of settlement for certain types of payments processed by a dedicated payment infrastructure accessible only to eligible participants, then the most appropriate legal basis for its issuance would be Article 127(2) TFEU in conjunction with Article 22 of the Statute of the ESCB. Finally, if the digital euro were issued as an instrument equivalent to a banknote,

[41] Leo Kriese, op. cit., p.15

[42] Bank of England, John Barrdear, Michael Kumhof, The macroeconomics of central bank issued digital currencies, July 2016, disponibil online la: https://www.bankofengland. co.uk/-/pdf, p 16, accessed at: 08.05.2024.

[43] Leo Kriese, op. cit., p.15

[44] Rennie, E., & Steele, S. (2021). Privacy and Emergency Payments in a Pandemic: How to Think about Privacy and a Central Bank Digital Currency. Law, Technology and Humans, 3(1), 6-17.

then the most appropriate legal basis for issuing it would be Article 128 TFEU in conjunction with the first sentence of Article 16 of the Statute of the ESCB.[45]

Overall, invoking Article 128(1) TFEU in conjunction with Article 16 of the Statute of the ESCB would give the Eurosystem the highest margin of appreciation for issuing a digital euro with legal tender status. Relying on Article 127(2) TFEU in conjunction with Articles 17, 20 or 22 of the Statute of the ESCB would be more consistent with the issuance of euro digital variants for limited uses without general legal course status. An act of secondary law, adopted on the basis of Article 133 TFEU, could be drawn up to regulate the conditions for issuing a digital euro with the status of legal tender by the Eurosystem.[46] In my view, it would be appropriate for the legal basis to provide a regulatory framework for the digital currency – the digital euro, the legal currency status, a more widely argued view in Section V.

Section IV: Implications of the digital euro at the level of European monetary policy and international impact

The impact of the central bank's digital currency on monetary policy is multiple. On the one hand, it could strengthen and weaken the transmission of monetary policy. On the other hand, although the central bank's digital currency may not alter the implementation of monetary policy in general, the application of its price rules as part of the ECB's monetary policy competence raises economic, legal and political concerns and must be carefully considered.[47] Money issued by central banks – coins, banknotes, reserves and CBDC – is issued under public law and is considered basic money with an unrestricted legal course.

In accordance with Article 127(2) TFEU, the European System of Central banks, hereinafter referred to as the SBEC – composed of the ECB and the national central banks, defines and implements the monetary policy of the European Union, but the European Central Bank is solely empowered to authorize the issuance of euro currency, in accordance with Article 282(3) TFEU. The process by which the ECB's monetary policy decisions affect the economy in general is called the monetary policy transmission mechanism. In simple terms, this transmission mechanism is the link between an objective which the ECB can directly influence and a final objective which is to maintain price stability in accordance with the principles set out in Article 127, referred to in Section I.

To achieve the operational objective, the ECB conventionally uses the following monetary policy instruments: (I) open market operations, (ii) permanent facilities and (iii) mandatory reserves. These monetary policy instruments have an impact on the real economy through so-called transmission channels. The most

[45] European Central Bank, Report on digital euro, October 2020, available online at: https://www.ecb.europa.eu/Report_on_a_digital_euro.en.pdf, p 24, accesed at data de 07.05.2024.

[46] Ibidem.

[47] Leo Kriese, op. cit., p. 203.

important channels in the euro area are the interest rate channel and the credit channel. With these being exposed, the issuance of a digital euro is really a monetary policy act of a significant dimension. Although the functions of the digital euro as a monetary policy instrument are not explicitly addressed in the ECB's relations, it will have implications both domestically and internationally. These issues are of interest to this paper because the interest rate paid for the digital currency of the central bank held by the MFI should be the monetary policy instrument equivalent to the current reserve interest rates, while the interest rate paid for the central bank's digital currency held by MFIs should be used for reasons of financial stability.[48]

In relation to monetary policy, a magnitude effect that the introduction of the digital euro would have would be to affect the transmission of monetary policy, as well as the negative impact on financial stability, for example by challenging banks' brokering capacity and affecting risk-free interest rates. Depending on its characteristics as a form of investment, the digital euro could lead depositors to convert their commercial bank deposits into central bank liabilities. This could increase the financing of bank costs and, as a result, interest rates on bank loans, potentially reducing the volume of bank loans to the economy.[49]

However, the international implications of the introduction of the digital euro cannot be overlooked. In addition to simplifying payments in the euro area and being a system that will allow cross-border payments, the digital euro will significantly affect monetary policy transmission, financial stability and cross-border financing.[50] The international vision needs to be integrated into the design of the digital euro from the outset in order to benefit from faster, cheaper and safer economic payments and transactions.

Section V: Conclusions. De lege ferenda

The CBDC raises important questions under the central and monetary legislation. Legal treatment under these law bodies will depend considerably on the design characteristics of the CBDC. In any case, token-based and account-based CBDC are very different concepts and forms of money from a legal point of view. Legally, the token-based CBDC would truly be a new form of money: A central bank debt embedded in a digital token and transferred through the transfer of that

[48] Mancini-Griffoli T et al., Casting light on central bank digital currency. IMF Staff Discussion, Note No. 18/08, availabe online at: https://www.imf.org/en/Publications/Staff-Discussion-Notes/, pp. 7, 8, 26, accessed at 03.05.2024.

[49] European Central Bank, op. cit., p .16.

[50] Filippo Zatti, Rosa G. Barresi, op. cit., cap. 7: Implications of the Digital Euro for Monetary Policy Transmission Outside the Euro Area.

token. Instead, the account-based CBDC is not a new form of money, but only the digital reserve.[51]

Starting from the main objective of the European Economic Community - the achievement of a common market, an economic and monetary Union, we support the fact that the institutions responsible for maintaining social and economic cohesion must keep pace with the dynamics and trends of society regarding the payment methods in this area.

Thus, the European Central Bank came to support citizens with the digital euro project. As a result, while still in the preparation phase, it is particularly important to establish and raise awareness of the legal implications it would have in the current monetary system, but also in the relations between participants in the economic circuit (B2B, B2C).

We believe that a first step toward achieving a digitalised, secure and reliable monetary system would be to give the euro a legal currency state. Primary law introduces the concept of legal course, without detailing its scope and its legal effects. While it follows from EU primary law that euro banknotes issued by the Eurosystem should be the only "banknotes" to benefit from legal tender status, neither the TFEU nor the ESCB Statute explicitly exclude the issuance by the Eurosystem of other assets or obligations (for example, ECB debt certificates) to benefit from legal tender status.in addition, the right to issue 'euro banknotes' could be understood as incorporating the right to determine the format or support of 'euro banknotes'. If the digital euro were to be treated as a banknote, then the exclusive competence of the Eurosystem under Article 128(1) TFEU to 'authorize the issuance of euro banknotes within the Union' could be invoked to allow for the issuance of a digital euro with legal tender status.[52]

Therefore, we consider it appropriate, however, to recognize the legal currency state of the digital currencies issued by the ECB (in the event of a real implementation of the digital euro) because obtaining this status would give it the legal power necessary to represent a true means of payment, an instrument which, in the future, would be a means of payment. for example, it would be the basis for contracts or the basis for fulfilling financial obligations, including tax payments, fines or legal damages.

In this regard, by virtue of a future revision of the Treaty on the Functioning of the European Union, we propose to amend Article 128 (ex art. 106 TCE), paragraph (1), with the following content:

The European Central Bank shall be the sole authority to authorize the issue of euro banknotes in printed or digital form in the Union. The European Central Bank and national central banks may issue such banknotes. Banknotes issued by the European Central Bank and national central banks are the only ones to have the status of legal tender within the Union.

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[51] Wouter Bossu, Masaru Itatani, Catalina Margulis et al., IMF, Working Paper, Legal Aspects of Central Bank Digital Currency: Central Bank and Monetary Law Considerations, WP/20/254, (2020), p. 41.

[52] European Central Bank, op. cit., p 25

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