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Original Research Paper

CHALLENGES IN LEGAL DEFINITION OF MONEY IN THE CONTEMPORARY SOCIAL AND ECONOMIC DISCOURSE [154]

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Abstract

The subject of the analysis in the paper is the identification and review of the challenges that exist in the science of modern monetary law in terms of the consistency and sustainability of the existing doctrines postulates about money as a legal category. In this context, the paper analytically and axiologically analyzes the concept of the so-called social and state theory of money that were of great importance in shaping classical monetary legislation and the establishment and popularization of an early monetary legal thought, while the second part of the paper points to the main principles of the so-called institutional theory of money, which considers money as a normative text sui generis, and at the same time strongly supporting the understanding of the central bank functional independence, which appears not just as the main monetary legislator but also as the addressee of the disposition contained in the monetary legal norms. In the circumstances of globalized financial and economic flows, as well as the intensive technological revolution, the existing understandings in the legal definition of money require certain relativization, taking into account first of all the emergence of digital money (both private and public) as well as the impact of monetary innovations on the preservation of monetary stability as public good which, according to the opinion of the author, imposes the real and logical need to redefine established understandings of the legal concept of money in a way that preserves the stability of the monetary system, central bank credibility and the citizens rights to a safe and solid currency, on the one hand, but also respects the needs of citizens to satisfy their preferences on the market through digital money, which is not included in the existing theories because it de facto represents a form of money (we mean the digital money of the central bank), and not a digital expression of the existing traditional money.

Keywords: *monetary law, legal theory of money, lex monetae, monetary order, monetary stability.*

1. Introduction

The development path of central banks, starting with the appearance of the first institutions that were involved in the issuance of money in a legally regulated manner, to modern multifunctional entities under public law that create, protect, and represent the domestic monetary system in international economic and financial relations, was very interesting, taking into account the multiplicity, the complexity, but sometimes conflicting relationship of various social, economic, political, cultural and other factors that

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conditioned their institutional position and mandate in the form we know today. The history of the development of modern central banking is relatively young if compared to the history of the commercial banks development. It is interesting to note that research in the field of analyzing and interpreting the concept of money as a legal phenomenon almost completely stopped in the middle of the last century, which is very surprising considering its legal importance. In that period, until recently, money was researched exclusively in the domain of economic sciences. Although these researches are necessary and closely related, because defining money in a normative sense requires prior knowledge of its economic functions, in monetary law, unlike the monetary economy, money is not a static concept, but a "faith imposed by law" in the context of the state nominalism.The economic functions of money arise from the commodity character of the market where different types of products and services are exchanged for money. The basic economic functions of money include its function as a means of exchange, a means of account, world money, and a measure of value preservation (Rahmatian, 2020, pp. 3-6). The oldest function of money is the function of a means of exchange where it is exchanged for appropriate goods and services on the market while satisfying different consumer preferences. Money also represents a means of calculation through which the price of certain goods and services is formed and expressed on the market, and at the same time it appears as a measure of value preservation that enables the preservation of its purchasing power, i.e., its transmission over time. In today's conditions, economic functions can be manifested differently in different circumstances, sometimes in a way that is not compatible with each other or in a way that economists cannot best understand due to the characteristics that arise from money as a dematerialized asset, as a result of which there is a justified need for a legal definition the concept of money.

2. Legal Concept of Money

The need for a legal definition of money stems from the unsatisfactory behavior of courts and other state authorities in monetary disputes, i.e. decisions that are often not argued satisfactorily. It is an indisputable fact that money in modern society is a legal creation, through law it is born, acquires meaning, and ceases to exist, just like any other asset, which is why its nature and essence should primarily be analyzed as legal categories, and only then give way to economic ones. analyses. We must bear in mind that every macroeconomic study on the effects of money on the economy is related to the object of research previously defined by law, even though the research methods are strictly economic. Legal theories of money therefore represent a base in research which is something that economists often neglect in their analyses. In domestic monetary legal acdemia, perhaps the most complete definition of money in the legal sense is given by *Krulj*, who defines money as "a material object (physical movable thing) whose substance may or may not have its value, on which a monetary (accounting) unit is marked, and which will express the value (price) of goods and services, which, either by itself or as a guarantee of a society organized in the form of a state, has a certain indefinite (variable) and undifferentiated purchasing power — a material object which, by the decision of the supreme (sovereign) authority (d*e jure* or *de facto*) has to serve as a general means of transport in the territory where that supreme power will be exercised" (Krulj, 1973, p. 28). Regarding legal conceptions of money, it must be emphasized that everyone has a common approach to viewing money as a creation of law (and not of the state), which is visible in cases of electronic money, and the state only appears as a subject that enforces rights. Generally speaking, when considering the concept of money as a legal category in the monetary law literature, a distinction is made between the views of the representatives of the so-called state theories of money and social theories of money.

Money in the legal sense should not be confused with the so-called *fiduciary money* which includes receipts or certificates of deposited gold from y bank with which the bank confirmed that it had received deposit of a certain amount of metal money. Those receipts were circulated because the recipient knew that he could present the receipt to the bank at any time and receive the metal equivalent written on the receipt. These banknotes were put into circulation and their holders could exchange them for gold at any moment,

but their circulation was not based on the legal duty to be accepted as payment, but on the trust of the public, which is where their name comes from (lat. fiducia for trust).

2.1. Social Theory of Money

Supporters of the social theory of money believe that for the conceptual determination of money, the attitude of society about what money is and what its functions will be is important, so they place importance on the trust that citizens show in it. Thus, Savigny set the basic postulates of this theory, considering that society (public opinion) decides whether something is money and to what degree it enjoys that property (Von Savigny, 1851, pp. 403-4011), which some authors interpret quite extensively, stating that for the property of money, the character of a material good is completely irrelevant.

Therefore, money is viewed as a concrete object that, regardless of its physical composition, according to accepted general customs, is given and received as so-called ideal unit, i.e. its integral part or multiple amount (Krulj, 1976, pp. 3-4). How important the position of public opinion is in the legal definition of money is perhaps best illustrated by the case of the French pound, which was in circulation from the reign of King Charles the Great to the Great Revolution and is known in monetary history as the so-called "*moneta imaginaria*" (famous invisible coin). Thus, the value of coins was not conditioned by the value of the monetary unit, but the value of the monetary unit was conditioned by the value of the metal from which it was made, and it follows that the nominal value of the coin, called valor impositus (lat.), is more certain than tariffs than the nominal value of coins. Taking into account the fact that money is created to benefit members of a certain social community, *Nussbaum* develops a sophisticated concept of the so-called "ideal currency unit", which does not depend on the value of a certain object in the real world and which as such is "dematerialized" (Nussbaum, 1950, pp. 11-19). This concept was widely accpeted in German during the periods of crisis when contracts were concluded in the so-called gold marks, although gold was not officially in circulation, but iwas way for contracting parties to protect their claims by using the precious metal. Although the concept itself was not accepted due to its somewhat metaphysical nature, there is no doubt that its purpose was to reduce the psychological costs of concluding monetary obligations, and as such it seems quite justified (Dimitrijević, 2018, pp. 40-45). At the same time, regardless of its relative independence from the value of the metal from which it is made, the nominal value of the currency unit remains threefold linked to it through generic (i.e. historical) conditionality, general goals of monetary policy, which determine the mentioned values on the principle of reciprocity and common psychological processes (feeling of connection) that members of a specific social group have in which money is used in payment transactions in a certain period.

The postulates of the social theory of money in monetary law and the law of central banks are not accepted because they give absolute primacy to the views of public opinion on the existence and purpose of money, thereby negating (minimizing) the role of law and the state (central bank) in that process. Of course, in some cases of economic disruptions, certain things can hypothetically acquire (lose) the character of money beyond the role of competent state institutions, but such examples can exist only temporarily in the zone of the gray economy, never legal monetary traffic. Such situations always imply the imposition of legal sanctions for non-compliance with national monetary regulations, because they play around with all the powers of central banks arising from monetary sovereignty, which are otherwise guaranteed by the constitution (of all countries in the world), and therefore enjoy adequate judicial protection.

2.2. State Theory of Money

Proponents of the state theory of money emphasize the role of the state, which, as the bearer of monetary sovereignty, enjoys a legal monopoly on issuing money. At the beginning of the 19th century, *Knapp* laid the foundations of this theory by emphasizing that money is subject to legal control by the state

and that its value is not determined by the value of the precious metal it contains but by its value (purchasing power). it comes from the country that creates the money (Knapp, 1924, pp. 1-2). In defining money as a legal category, *Mann*, one of the leading theorists of monetary law, points out that all movable (small) property must be included under the legal concept of money, provided that it is issued by legal authorities to whom the state has delegated that right and which is denominated as a means of calculation (payment), and under the conditions prescribed by law, serves as a legal means of payment understood in the broadest sense (Proctor, 2012, pp. 15-16). Also, he points out that "what gives a thing (either a piece of metal or paper money) the legal character of money is the fact that it will receive payment not for what it materially represents, but as its equivalent, part or multiple of an ideal unit, where that ideal unit represents the basis of the monetary system".

Although at first glance it may seem that the social theory of money is more suitable for considering the implementation of the norms of monetary law on the regional and international level, especially the EMU, and that the state theory loses its meaning in the circumstances of such a complex monetary union, such a statement requires a detailed analysis. Namely, the ideology of the state theory of money does not prohibit states from engaging in the process of monetary unification and the introduction of a single currency. At this point, it is necessary to point out the differences between the concepts of currency school and the banking school). Representatives of the first theory believe that the concept of money can only include coins and paper money issued by the state or an entity that is under its control and to which it has ceded that right, which implies that the process of creating money itself remains a matter of importance for the state, while the distribution of money is entrusted to banks and other private financial intermediaries. Such understandings have also been confirmed through legal incorporation in the Statute of the Central Bank of England and Wales, Austrian monetary law, the US Constitution, as well as the views of the US Supreme Court, which recognizes the right to define money and organize legal tenders for its issuance exclusively to the state. It is notable that such legal viewpoints fully correspond to the standards accepted in modern monetary law, which can recognize the right to issue money by commercial banks only in rare cases, which are always strictly procedurally, subject-wise, and time-limited due to the interests of legal security and preservation of the assets of the legal order. The aforementioned is practiced only in extreme situations (major economic disruptions, disavowal of the entire economic system, and remediating the consequences of global economic and debt crises).

The influence of law in determining the concept of money is unavoidable because the relevant monetary regulations (we mean primarily the laws governing the establishment and operation of central banks) confirm that "the nominal value of official funds in payment circulation is independent of the intrinsic value of the paper (metal) from which they are assets shaped and made, as well as their external value shown in comparison with other currencies. The justification of the legal definition of the concept of money comes from the distinction between the so-called intrinsic and extrinsic value value of money (Nussbaum, 1950, pp. 18-19). The first-mentioned value is the exchange value that is considered from an economic aspect, while the second-mentioned nominal value is prone to fluctuations and as such must be subject to legal regulation. However, for economists, this value represents continuity in time, so it cannot be approached naively by law, either in the form of some fiction or following "folk" beliefs. Regardless of the aforementioned, the economists themselves admit that the acceptance of money as a means of exchange greatly contributes to its legal status. This status is enjoyed by money that has been established (proclaimed) as a legal means of payment and to which the court refers as authoritative in disputes related to the fulfillment of owed monetary benefits, which means that in the monetary literature, a distinction is made between legal money and customary money that does not enjoy legal status (Newlyn, 1963, pp. 2-3). In considering the legal concept of money as a legal means of payment, some authors believe that the organization of a legal tender appears as an unconditional and current production of something to satisfy financial obligations towards others and that once the tender is carried out, the obligation itself arises which reflects the circular character definitions of legal tender (Penny, 1988, pp. 11-12).

The existence of monetary sovereignty a necessary condition for issuing sovereign money, but we must bear in mind that this is about the original monetary sovereignty of the home state, not the imposed monetary sovereignty of the occupying state. This is precisely why the state theory of money cannot implement its application without reservations in the circumstances of international war conflicts, but also of international monetary integrations. At the same time, we must take into account the so-called *Gresham's law*, which considers the legal fate of undervalued money that the public does not want to use in payment transactions. Namely, the very fact that citizens under a specific monetary jurisdiction do not want to use a certain amount of money remains just a factual fact and nothing more than that, without a specific legal effect. This means that the undervalued money has not lost its legal status, i.e. property of legal tender. The same implies that such money can be subject to confiscation in the potential settlement of monetary debts, and such money (and today it is gold) is calculated according to its nominal value. Accordingly, debt settlement in gold coins is solutio, and not perhaps datio in solutum (Meichsner, 1981, pp. 36-37). According to this setting, the court in a monetary dispute may not take into account the fact that a long-term monetary obligation has lost its effective value over time. The tendency of citizens to favor the use of specific money in fulfilling certain preferences can be a significant indication to the monetary legislator to regulate the issue differently because if the central bank enjoys the legitimacy of the procedure, this means that the citizens themselves have delegated to it their original powers to perform the tasks in question, and their interests must be respected.

Since the initial years of its creation, the monetary system has been contractual, but the term contractual here does not refer to the usual meaning it has in private law but implies a set of rules accepted by all state and legal mechanisms of government. Consequently, money is irreversibly variable, and therefore the laws governing the monetary system of a country are not set ad infinitum but are prone to evolutionary changes (Byttebier, 2017, pp. 16-21).The development of electronic money, crypto-assets, and digital currencies best illustrates this, taking into account the change in the legal treatment of the physical substance of new means of payment, the determination of issuers (where they can also be subjects of private law) and the development of special financial standards that guarantee the confidentiality of data, the protection of personal rights and consumer rights. In modern society, the monetary system is based on a cohesive legal system (where the degree of cohesion is more or less pronounced), which means that the monetary system enjoys the support of a democratically established representative body and is a reflection of the will of society. In the theory of monetary law, it is sometimes emphasized that even in the legal definition of the concept of money, the essential elements of its nature are not legal (normative), because dynamic elements that cannot be controlled prevail, which means that the state has not managed to monopolize the right to issue money completely.

Although the principle of state nominalism is dominant today and had its place in the constitution, this does not mean that there are not certain inconsistencies in shortcomings that can be observed in its application. Namely, this principle is a principle of private law and as such cannot be adequate in all situations in which monetary policy (as a part of public policy) is found. In cases of hyperinflation, when the monetary system collapses, there is a need for its revalorization or replacement in the form of the principle of valorism. Revaluation is carried out subsequently after the damage to the monetary system and citizens have already occurred, but in practice, it is used more often, even though it is inherently more demanding in terms of operational technology. Valorism as a theoretical approach is based on the understanding that the value of a monetary obligation is determined by the contracted value, not the amount of money raised. The principle of nominalism nevertheless confirmed its actuality in the various circumstances in which the monetary system found itself.

2.3. Institutional Theory of Money

Representatives of the institutional theory of money think that the concept of money does not only refer to money in circulation but also includes the dematerialized concept of money such as deposit claims to credit institutions that represent special scriptural money understood in the context of abstract money claims with real coverage (Lastra, 2015, p. 17). This theory is based on two principles: an independent central bank that guarantees a stable money supply, and a legal framework that guarantees, supports, and protects its independence, but where the organization of legal tenders remains only a lonely concept in modern society because cash is increasingly being pushed out of payment transactions. We can see that the institutional theory of money represents a special form of state theory, now understood in the narrowest sense of the word. It differs from state theory in that it downplays the importance of the legal tender for issuing money because it treats it as a mere technical action, which is why it can remain one-sided in considering all the important characteristics of money.

It is clear that there is a complementary relationship between all the mentioned theories and that none per se can offer a universal definition of the legal concept of money, which is why it is absent in practice. On the other hand, in the works in the field of monetary law, it is pointed out that the surprising fact is "that for so much money today in practice there are so few rights" and that the regulations on the money itself (we do not mean the monetary benefits that are the subject of the dispute, but teleological understanding of money), are rarely discussed before the courts, because the legal treatment of money is always subject to social consensus.

At this point, we must mention that in considering legal theories of money, one group of authors points out that in legal analysis we must respect the fact that money represents a specific normative text, according to which money as a specific movable property is created by strictly legally formalized words, figures and symbols (Rahmatian, 2014, pp. 228-230). They find justification for such an understanding in the similarity of the texts of literary and legal literature, where in the former the writer describes certain types of behavior, while in the latter the legislator in the role of the writer prescribes the desired behavior determined by legal disposition. Thus, *Rahmatian* finds and explains this connection in the classic works of Gogol, Goethe, and other great writers, stating that "all people under the influence of legal norms are like actors in a theater who behave and perform the law as it is written in the legal texts." The same author accordingly considers that the res of money (as with any other property) is an abstract legal concept that must be represented or reactivated by tangible things, such as coined or paper money (cash), but does not have to be (bank money). This means that money is created with special normative words and expressions (especially numbers), all to encourage the desired social behavior.

The dematerialization itself takes place in two phases: property rights refer to the basic debt as res, res (money) refers to the expectation of a future right to other money using a social benchmark of true value (e.g. food, clothing), and that property formed by the text gets through human behavior a paper value that serves as a security (mortgage) for obtaining a loan. Writers and poets, according to this author, were probably among the first who had the sensitivity to understand the almost "alchemical" nature of money (not in the literal sense, but in the sociological sense) and who recognized man's tendency towards commodification, that is, the need to make a lot of expressed through the market value. In this light, the author points out that some writers understood the moral and (somewhat) quasi-religious motives of a monetary system where the act of giving itself is not a "gift", but a transfer that creates an obligation for someone else, like a loan that is repaid (but at the same time also creates a moral debt towards oneself). Under the above, we believe that in the legal definition of the concept of money, both state and social theory provide their contributions, but in our opinion, state theory to a much greater degree, with the fact that social theory must enjoy equal attention from lawyers because we must not forget that money confirms its true meaning only when it is generally accepted by society as a legal means of payment, where citizens' resistance in this sense could have significant legal, economic, social, psychological and political negative repercussions. The monetary legislator must prevent such situations by creating an optimal institutional

framework for the legal regulation of money, taking the best of all the mentioned theoretical positions, while canceling their shortcomings and inapplicability in specific legal situations, either in normal or exceptional circumstances.

Adequate monetary legislation must be placed in the function of realizing the general social interest of a specific community, so that, unlike other forms of purely civil legislation, it cannot be a trivial matter of skillful nomotechnics that does not have to be a problem for a good legislator. The concept of money is in its nature multi-layered, and legal science cannot ignore its economic functions and psychological effects that its application brings with it in the form of various distorting effects (changes in the behavior) of citizens with money, its meaning, expediency, and significance in everyday life. At the same time, an important circumstance of modern money flows is the fact that monetary transfers are less and less understood as cash payments in the sense of using banknotes or coins, which are increasingly becoming a relic of the past, and certain monetary jurisdictions decisively prohibit such payments, which must be replaced by the use of checks or Burmese bills. order to fight against tax. (Usher, 2000, pp. 96-97). The main reasons supporting the principle of nominalism include the protection of the government, which is the main debtor of the public loan policy in modern countries, and the expression and management of credits and loans in the modern economy is based on the nominal value of money. In this regard, it is considered that any deviation and departure from the nominalist solution would permanently disturb the balance between the rights and obligations of the contracting parties, as well as the state of assets and liabilities in the financial statements (including other relevant accounting documents). However, it should be borne in mind that this principle is also based on the fiction that the value of the currency before the devaluation is equal to the value of the currency after the devaluation. A potential problem of modern monetary law comes from the weakness of the principle of monetary nominalism according to which "a dollar is always a dollar and a pound is always a pound" in the eyes of the legal understanding of changes in the economic value of a currency. Therefore, supporters of alternative legal and economic theories on defining the concept of money have developed a different approach in the form of a value approach, which is based on the purchasing power of currency. Although this principle is not accepted by any legal system in the world, the fact is that the modern homo economicus is truly a valorist, not a nominalist who is not fooled by the monetary illusion, so the reason for accepting nominalism when concluding a contract is the consequence of not offering another practical choice. Therefore, it is proposed to include these postulates in the principle of state nominals, to establish a balance between the nominal and real (purchasing) power of money.

3. Some Remarks about Central Bank Digital Currencies

Over time, central banks have become aware that innovations can facilitate access to financial resources that provide better financing (especially for small and medium-sized enterprises), contribute to the development of new payment services that are better adapted to the "digital needs" of consumers, increase the level of security and offer greater cyber resilience threats. On the other hand, the uncontrolled use of technologies can lead to market fragmentation, monopoly situations, and greater exposure to risk, i.e., weaker consumer protection and the undermining of achieved financial stability. There is a particular concern if large technology companies have the ambition to build their own financial infrastructure and monetary system, creating a series of extreme global financial risks (G7, 2019). It is interesting to point out that the Central Bank of France once conducted the first experiment in the field of issuing digital currencies together with the Société Générale Bank. This operation consisted of the calculation of tokenized bonds worth 40 million euros issued by Societe Generale SFH against tokenized euros issued by Banque de France in the blockchain (Fasquelle, 2020, pp. 179-190). Among the questions that this experiment imposed, were those related to the method of determining and recording prices on the primary and secondary market and their use in the calculation of margins and hedging, monitoring risk flows, and finding adequate protection to the resulting exposures for the contracting parties stood out and the challenges of managing flows (securities or cash) arising from hedging. The benefits of issuing central bank digital currencies include

modernizing the payment system, reducing public expenditures in the field of public procurement and government subsidies, changing the landscape of financial inclusion architecture, and improving the system of recording and controlling cash flows as a whole (Brummer, 2019, pp. 286-288). When it comes to risks, they refer to technical difficulties arising from the absence of internationally accepted standards on decentralized financial technologies. Other challenges are related to the influence of digital currencies, whether private or public entities, on the financial market and the economic system as a whole, which entails the adoption of a new one, i.e. adaptation of the existing legal regulations.

A different concept in the process of legal regulation of the central bank's digital money is quite radical and instead of complementarity, it emphasizes the need to replace classic money with digital currencies, considering that there are all the necessary conditions for this, starting with the right tender for its issuance, through data protection and security of transactions, and stating that is the monetary scenario that surrounds us today very similar to the one that preceded the issuance of banknotes in the 13th century which perhaps one day the chroniclers of monetary history will write about as a turning point in the history of the development of money (Papapaschalis, 2020, pp. 200-201). Although we agree that in the process of issuing digital currency of the central bank, a clear distinction should be made between what is legal and what are the other political and technological conditions that must be fulfilled beforehand to ensure the meaning of the process, we also believe that the simplification of the facts is not necessary either. and that it can be an aggravating circumstance on the path to optimal legal regulation of digital currency, and that the path that the monetary legislator should follow is the one that has already been successfully mastered when issuing electronic money.

When we talk about the digital money of the central bank, it should be emphasized that there is no universally accepted definition, but it most often means "any form of lump-sum liability of the central bank that is available to all economic agents without special conditions". Forms of central bank digital currency can appear as mandatory deposits of commercial banks with the central bank (through the well-known discount rate policy) or as hybrid prepaid cards or so-called "mobile wallets" that contain cryptocurrency (Meaning et Al, 2018, pp. 1-5). Both forms of digital currency are based on the use of a special sharing technology that a central bank must possess as a prerequisite for issuing digital money. The basic *ratio* of the introduction of the new currency is initiated by the high demand and "popularity" of private digital money, with the fact that all risks related to its use with central bank digital money are avoided because public (state) monetary management is behind it. The issuance of digital money by the central bank can also have a significant psychological effect, which is reflected in the strengthening of citizens' primordial connection with monetary sovereignty and the concept of monetary policy, which as a public policy should serve all citizens.

When it comes to a credible consideration of the need to issue a digital currency to central banks, it is important to point out the joint statement of the eight most important monetary institutions, namely: the Bank for International Settlements (BIS), Bank of Canada, ECB, Bank of Japan, Swedish central banks, Swiss national banks, the Bank of England and the FED (BIS, 2020). In the announcement, the central banks expressed the unequivocal need for the coexistence of digital currency with traditional money, if this is how the component of flexibility and innovative character of modern fiscal systems is improved. It is important to note that in this announcement, central banks take the position that the issuance of digital currency is not a goal per se, but is in the function of supporting all monetary policy goals, where, considering the different political and cultural preferences of central banks and different legal regulations, the future concrete (legislative) approach in the treatment and regulation of digital currency may show more or less differences (Heinz, 2020, pp. 166-167). Nevertheless, the importance of the document is reflected in the initial positioning of the main determinants of the digital currency, that is, the recognition of the need of the supreme subjects of international monetary law that the digital currency "exists" and that as such it will find its place in the monetary regulation. Until the release of this document, it somehow seemed that central banks were deliberately ignoring this form of digital monetary innovation, which was also contributed to by the announcements of the IMF that digital money will never be able to replace traditional money and that

the transactions carried out with it are at a low level, but over time the access is quite has changed. Ultimately, digital currency should not be thought of as a disloyal competitor to traditional money, but as a new form of means in which consumers want to satisfy their preferences in modern society. In support of this, the Blueprint of the digital euro (ECB, 2020) issued by the ECB speaks best, while a similar draft law on digital currencies was offered by the National Bank of Japan. The issuance of the draft was preceded by an extensive public discussion, about whether the interested social and professional public would become familiar with its content since it is the first official publication of the ECB on the topic of digital money of the central bank. The draft was developed by the Eurosystem's expert group and approved by the ECB Executive Board, and it provides for the first time an official definition of the digital euro, looks at the potential effects of its issuance, considers various optimal design options and other issues of a technical and organizational nature. The Draft clearly emphasizes that digital currency is not a substitute for classic money and that the process of issuing it must be based on synergy with the industrial sector (which, among other things, promotes it). Although (perhaps) at this moment the legal regulation of digital money does not seem like a necessity, the draft highlights the potential causes of its regulation, which concern a significant drop in the use of cash, the elimination of risks, and the great popularity of the second generation of alternative currencies, such as the pound. The Draft also sets out some of the foreseeable side effects of issuing a digital euro, which include the impact on the banking sector (including its role and funding) and financial stability, on the ECB's balance sheet, which is expected to be larger but possibly more fragile with issued digital currency; and, finally, to weaker digital currencies that could be more marginalized and (probably) lose importance. Taking into account all the mentioned difficulties and challenges, the results of the monetary projections in the EMU point to the conclusion that the digital money of the central bank will probably not be fully legally regulated before 2026 because despite the increase in the demand for economic entities for payment solutions that use the technique of sharing the central bank they still do not possess the necessary expertise to follow these flows of the real economy (Heckel, 2022, pp. 107-109). The reason for this prolongation is the concern of the central bank due to neglecting the intermediary function of the banking sector, which is their traditional role because the development of the economy is based on loans from commercial banks. Nevertheless, the presence of smart contracts is increasingly relativizing this role of the banking sector, which requires an appropriate response from the central bank to prevent the gains made on this front

When it comes to the monetary and legal aspects of digital money, IMF studies point out that digital money does not represent a new currency unit, because digital money is only spoken of as a digitized form of traditional money, which means that it is only a "new design" and the form of expressing already existing money, and not the introduction of a new currency unit (Bossu et Al, 2020, pp. 27-38). This implies that there are no changes in the way the norms of monetary law and the rights of the central bank are operationalized because the only thing new in the structure of the law of central banks is that the central bank gets a new authority to simply issue a digital form of an officially denominated monetary unit, such as banknotes, coins, book money and bills of exchange. According to the new powers, the central bank will also have the obligation to guarantee the convertibility of digital money according to other monetary obligations of the central bank (which especially applies to banknotes and book money). Of course, by changing the monetary legislation, it would be possible to define a digital currency as a new currency unit of a specific monetary jurisdiction, but the prerequisite for such a change is to prescribe a reliable (digital) conversion mechanism for determining the exchange rate with the existing monetary unit of the country. This would practically mean that in the structure of the domestic monetary policy, a distinction would be made between the monetary regime of two parallel and completely equal monetary units, but in this connection, the question of the concrete benefits of such a complex solution arises. Also, a monetary system with a dual currency would require continuous and long legislative changes, some of which might not have constitutional coverage, even with the readiness of the competent state authorities to embark on such an undertaking (this would mean that the constitution would have to be amended beforehand, which may be expensive and unpopular measure).

4. New Role of the Central Bank in Digital Currencies Market

The technological revolution has undoubtedly redefined the established understandings of monetary law about the role of the central bank as the sole issuer of money. Namely, the use of technology in the creation of new money that is accepted by monetary users violates one of the basic rules of monetary law that the role of the issuer must not be natural persons. Although it is indisputable that in the conditions of the technological revolution, the central bank must redefine its functions and tasks, this must not be at the expense of monetary security, which is its main task. Although the role and the increased number of natural persons in the creation of cryptocurrency must not be ignored, because that would be simultaneously ignoring the postulates of the social theory of money (according to which the attitude of citizens about what money is, and not what the state has prescribed, is important), this does not mean that the process of further development of the use of cryptocurrency should be realized outside the jurisdiction of the central bank.

Legislative initiatives that would accompany the introduction of central bank digital money also depend on the specific form of that money, more precisely, whether it would be based on the introduction of tokens or central bank assets. If that digital money expressed in tokens were to be legally equated with banknotes (to the extent that this is even possible), the conditions for it to receive the status of legal tender should be established beforehand. One option in this regard is to limit the status of legal tender to a closed circle of sophisticated entities (state, public services, large traders, and/or firms with authorized activities, such as banks). After that, it would be necessary to carefully analyze the private law classification of digital money based on tokens and whether it is justified to give it certain advantages (incentives) arising from the principles of private law in terms of promoting use (advantages and benefits of use in payment transactions should be regulated by new solutions to popularize the use of central bank digital money). In the end, the issuance of digital money by the central bank would also mean the need to redefine criminal legislation in the part that refers to the legal existence of criminal acts of cybercrime, but also financial crime (in general). On the other hand, digital money based on an account does not require all the mentioned activities, because, from a monetary point of view, it is not a new currency unit, but only accounting money expressed in digital form. In its statement on the potential implications of the introduction of stable currencies on monetary policy, the European Central Bank indicated three possible scenarios for the introduction of stable currencies where emphasizes their auxiliary function in the concept of crypto assets understood in the broadest sense of the word, the second which guarantees a safer collection of income from payments in cryptocurrencies (and in which they appear as a new method of payment) and the third, where cryptocurrencies appear and are treated as an alternative measure of value preservation, which is otherwise one of the basic economic functions of classic money (ECB, 2020, pp. 1-5).

In the monetary literature, it is emphasized that the taxonomy of all forms of money (both traditional and alternative forms) is based on the application of three criteria: the legal subjectivity of the issuer; a form of money, that appears as physical or digital, and; transaction settlement mechanism, which can be centralized or decentralized (Claeys, Demertzis, 2019, pp. 1-10). One of the reasons for the lack of acceptance of the first generation of cryptocurrencies is related to the inelastic demand caused by several risks such as issues of protection of privacy rights, unclear compensation, and protection of other personal data. This risk is reduced with the second generation of cryptocurrencies, but the issue of a kind of monopoly over issuance by giant technology companies that will be in the role of issuers is raised. Of course, the existence of a monopoly in law in itself is not punishable and harmful, but it is a potential abuse of a monopoly position, which is a well-known fact in the field of commercial law. In this place, for the first time, we encounter the existence of a kind of "private monopoly" over the issuance of the second generation of cryptocurrencies in monetary law, which can have very serious consequences. For example, in 2017, the number of Bitcoin users was 7 million, while the number of registered users of the Facebook network was 2.5 billion (as potential people interested in using the libra), which is a far greater number than the total number of users

of foreign currencies such as euros or dollars. This fact perhaps best indicates the potential of monetary supremacy of the technological and telecommunication giants that are in the role of issuers of alternative currencies. Such a potential, in a certain sense, can affect the implementation of monetary sovereignty, which subjects of private law can never carry because it is inseparable from the political sovereignty of each state. On the other hand, issuers of stable currencies may have a problem, because they will have the obligation to guarantee price stability, which may conflict with their main goal, which is profit maximization. It follows from the above that the issue of the implementation of monetary sovereignty has never before been connected with the primary motive of business operations, which will represent another great challenge for the legislator to solve the issue of permission to issue stable currencies in a way that is legally understandable and desirable.

Conclusion

Adding new powers to the central bank can be a complicated legislative procedure, bearing in mind the fact that the number of its tasks has increased significantly after the global financial crisis. The objectives for which the central bank is now responsible are very often in conflict with each other, which imply prior purification when choosing a specific objective as dominant at a certain moment in monetary history, but also raises the question of the responsibility of the central bank. Today, more than half of monetary jurisdictions in the world are engaged in exploring CBDC at some phase. Because CBDC represents a new form of sovereign money, it is necessary to provide enough regulatory capabilities for the central bank to use and provide an optimal definition of money. That can be hard to get when central banks are dealing with many other tasks in the field of cohesion policy, environmental policy, human rights protection, and the fight against financial crime, maybe it would be useful to define where the central bank's responsibility began and where it ends. The mentioned demarcation is necessary to provide the central bank the opportunity to use full its capacity to explore CBDC and establish an optimal and sustainable legal framework. Also, a prerequisite for enjoying the benefits of the introduction of digital central bank money is the full implementation of interoperability, i.e. the ability for synchronized joint work of various systems, techniques, or organizations now directed towards the monetary, state, and IT sectors. Interoperability as an ability of heterogeneous systems requires that these systems work as well as possible, so that information can be exchanged, that is, so that it is available to the user, without requiring additional operations (requirements) for communication between two systems, which in the field of digitization of central bank legal norms, it has not yet been achieved to the required extent.

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