Essays

Money Governance: Accommodating Complementary Currencies in the European Legal Framework

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Abstract

Complementary currencies (CCs) are means of exchange other than official currencies and perform ancillary functions: from local development to social and financial inclusion, from recovery following disasters or wars to fostering intergenerational solidarity, and pursuing environmental policy priorities. This paper aims to investigate whether monetary sovereignty leaves any room for private actors, in line with the principle of horizontal subsidiarity, which addresses the relationship between the individual with the community.

I. Introduction

The democratisation of money seems like an oxymoron, since, traditionally, monetary sovereignty exhibits strict hierarchical governance.[1] In the exercise of their sovereignty, nation-States are empowered to: issue currency in their territory, determining the name, the value, and the physical features of their currency; replace the old currency with a new one; establish a rate of conversion between old and new currency; regulate payments and exchange control; prohibit the making and receiving of payments and transfers of foreign currency for domestic and international transactions; and implement monetary policy by extending credit to commercial banks or other financial intermediaries through bookkeeping operations (such as opening lines of credit, open market operations, discounting facilities) that may influence the composition of the monetary base and credit access for final prospective borrowers.[2] This is a long list of powers (and duties), to which we can

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[1] There is an extensive body of legal literature on the concept of monetary sovereignty. As a starting point for discussion and study, refer to: F.A. Mann, *The Legal Aspect of Money* (Oxford: Clarendon Press, 5th ed, 1992), 460–478 on the State theory of money; see also K. Pistor, 'From Territorial to Monetary Sovereignty' 591 *Columbia Law and Economics Working Paper*, 503 (2017): she argues that, despite the huge amount of private money multiplication, '... the only safe asset is state money, and only few have access to it on demand: regulated banks with access to reserves held at central banks, the discount window or emerging facilities made available to them, and, of course, the state itself'.

[2] The Permanent Court of International Justice has said 'It is indeed a generally accepted principle that a state is entitled to regulate its own currency. Money, like tariffs or taxation or the admission of aliens, is one of those matters which prima facie must be considered as falling essentially within the domestic jurisdiction of States'. See: F.A. Mann, n 1 above, 465.

add that of making payment systems work safely and efficiently, where the payment system as a whole is dealt with as a 'set of instruments, procedures and rules for the transfers of funds among system participants'.[3] This approach is viewed critically by those who argue that the Westphalian conception of monetary sovereignty, firmly rooted in the idea that 'States can do without interferences from other States', is no longer a workable plan since as long as sovereign powers remain with nation-States, they alone have the capacity and authority to transfer or share such powers with another governing body, such as an international organization.

There are various examples of delegated monetary sovereignty around the world, such as Central African Monetary Unions, the Eurozone, and the International Monetary Fund.[4] Therefore, the exercise of monetary sovereignty can be seen as a question of vertical subsidiarity – that is, whether a local level should be prioritised over a national government level, and a national level over European or international polity,[5] assuming that

> 'low-level public institutions are the first ones in the institutional pyramid to enter into action, leaving space for the involvement of the higher-level ones only when unavoidable'.[6]

This is vertical subsidiarity concerning the allocation of monetary power among public authorities, and between central and local public authorities.

In contrast, this paper aims to investigate whether monetary sovereignty leaves any room for private actors, such as associations of citizens, in line with the principle of horizontal subsidiarity, which addresses the relationship between the individual and the community.[7] This paper argues that the horizontal subsidiarity principle is somewhat overlooked in the context of the European Union (EU) pillars and, together with the principle of proportionality, could provide a basis for accommodating CC schemes, as long as these schemes remain faithful to their economic rationale and operate within the regulated businesses framework.

[3] See: Committee on Payment and Settlement Committee (CPSC), *Core principles for systematically important payment systems* (Basel: Bank for International Settlement Information, Press & Library Services, 2001), available at: https://tinyurl.com/2vazxsbe (last visited 31 January 2026). Most of the time, payment systems comprise only of funds, but from a stability standpoint it is important to also include payment systems covering the transfers of other financial assets such as securities.

[4] F. Gianviti, 'Current Legal Aspects of Monetary Sovereignty', in International Monetary Fund (IMF) ed, *Current Development in Monetary and Financial Law* (Washington: International Monetary Fund, Publication Services, 2008), available at https://tinyurl.com/h72afb8b (last visited 31 January 2026).

[5] P. Spicker, 'The principle of subsidiarity and the social policy of the European Community' *Journal of European Social Policy,* I, 3-14 (1991).

[6] S. Moroni, 'Revisiting Subsidiarity: Not Only Administrative Decentralization but also Multidimensional Polycentrism' (155) *Cities*, 463 (2024).

[7] The analysis could also be carried out from the standpoint of public bodies, to ascertain the extent to which municipalities might issue complementary currencies. However, this is beyond the scope of this paper.

The concept of complementary currencies (CCs) is the starting point of this legal analysis. There is no one-fits-all definition of CCs. Some scholars define CCs as 'a variety of schemes for exchanging goods, services or knowledge organised by and for small groups using *ad hoc* forms of currency'.[8] Others address them as

> 'specific units (or systems) of accounting that complement official currencies; they have developed by groups of individuals, enterprises, local authorities, non-governmental organizations (NGOs), associations, foundations, etc, that have set up trading networks in delimited territories, with a view of accounting for and regulating the exchange of goods and services'.[9]

This paper consists of three further sections. Section II outlines the rationale behind CCs, exploring their objectives, how they are classified, and their organisational models. This descriptive presentation covers different types of CCs and their connection to the mainstream economic system as well as financial and banking infrastructure. It aims to provide readers with a proper understanding of a topic that usually falls beyond the scope of legal research. However, there is a caveat: the statutory rules of CCs are not often easily accessible. Therefore, in this paper, the analysis of CC schemes is based on documents available online, interviews with grassroots actors, and specialised and cross-disciplinary academic literature that is predominately associated with the RAMICS network.[10]

Section III examines CC schemes to assess how they interact with, and possibly challenge, the European Union legal framework in relation to financial and banking services, competition in the internal market and the EU approach to private currencies. The legal investigation here focuses on CC schemes that have a strong connection to the traditional monetary and financial systems, and to the broader economic context, since they may pose a risk of contagion.

Section IV takes a regulatory approach to CCs with a view to establishing a workable regulatory strategy. Since regulation may also provide a normative framework to develop new economic and monetary experiences, this section also delves into the principles of vertical and horizontal subsidiarity as a regulatory perspective that can provide CC schemes with a sound accommodation in the EU context under a pluralistic institutional approach. Finally, section V presents conclusions.

This paper does not claim to provide readers with concrete solutions for managing the development of CCs. Rather, it aims to present the rationale behind CCs, offer an overview of some CC projects, and address some regulatory issues that policymakers, supervisory authorities and CC founders should consider

[8] J. Blanc, 'Community and Complementary Currency Systems' in H. Keith et al eds, *The Human Economy* (Cambridge: Polity, 2010), 303-312.

[9] M. Fare and P.O. Ahmed, 'Complementary Currency Systems and Their Ability to Support Economic and Social Changes' 48 *Development and Change,* 847–872 (2017).

[10] https://ramics.org/.

when involved in a CC project or experience. In other words, the paper clarifies the relationship between CCs and the legal framework. By understanding this relationship, CC fieldworkers can avoid infringing the law and make sense of the growing and increasingly widespread regulatory strategies.

II. Complementary Currencies: Rationale and Classification

CCs – also known as alternative, community, social and local currencies – are means of exchange other than official currencies and perform ancillary functions: from local development to social and financial inclusion; from recovery following disasters or wars[11] to fostering intergenerational solidarity; and pursuing environmental policy priorities.[12] CCs are sometimes set up by public entities, such as municipalities or regional authorities, but more often by non-profit associations or informal groupings of people.[13]

Importantly, CCs are neither a recent development nor a strictly digital monetary phenomenon. In fact, the earliest CCs go back to at least the first half of the nineteenth century, when Robert Owen launched labour notes as a form of currency in which the prices of products were based on the number of hours needed to produce them. Around a century later, the concept of 'local script' currency was proposed, based on the principle of demurrage developed by Silvio Gesell. According to this principle, the face value of a script decreases over time if the currency holder prefers storing rather than spending and circulating the currency. This was followed by systems of local vouchers in France and barter clubs in Argentina. In the 1970s, the Japanese Fureai Kippu system was developed as a CC scheme committed to promoting community solidarity. In the early 1980s, the Comox Valley, on Vancouver Island in Canada, experimented with the Local Exchange Trading System (LETS), a mutual credit system introduced in a context of high unemployment. Further CC experiences in the early 2000s included the Time Banks, like Ithaca Hours in the United States, and regional currencies like Chiemgauer in Germany; they were both considered part of the third generation of CCs.[14]

As nearly all of these examples show, CCs generally arise in times of crises, natural disasters, or wars, when the purchasing power of the official currency is weak, the level of unemployment is high, or trust in the banking and financial system is significantly jeopardised, as happened recently with the 2007 financial

[11] As for Domo CC, see H. Nakazato, 'Community Rebuilding Processes in a Disaster-Damaged Area through Community Currency' 26(1) *Disaster Prevention and Management*, 79-93 (2017).

[12] A complementary currency of this type is *climate change bonus*: C. Gelleri, 'Creating Monetary Collaborative Spaces for Social and Ecological Transformation' 14 *Sustainability,* 1-20 (2022).

[13] See, for example, Sarafu in the Kenyanian microfinance experience, whose saving groups remind us to some extent of the microfinance scheme designed by Nobel Laureate Mohammad Yunus. On Sarafu, see: G. Kuk et al, 'Complementary Currencies and Entrepreneurship: Sustaining Micro-Enterprises in Kenyan Informal Settlements' 18 *Strategic Entrepreneurship Journal,* 1-34 (2023).

[14] A survey of CC experiences in: M. Fare and P. O. Ahemed, n 9 above, 847.

crisis. They often tend to drop out of use when the period of economic instability or financial distress has been overcome. CCs aim to influence the allocation function performed by commercial banks in credit intermediation influenced by central banks. In fact, CC scholars and grassroots developers often take a critical view of the fractional reserve banking system. For example, it has been argued that financial institutions

> 'get profits from the multiplier money mechanism and interest charges, leading to an ever-expanding economic system that keeps operating to ensure debt repayment and the payment of the interests'.[15]

Moreover, CC scholars and grassroots actors often critically emphasise the level of instability instilled into the financial system whenever central banks try to increase the speed at which they *print* new money.[16]

There are consumer-to-consumer, business-to-business and consumer-to-business CCs. In all cases, they are non-national and, most of the time, non-profit currencies.[17] As far as the organization of CCs is concerned, there is no one-size-fits-all model: it depends on the objectives, guiding principles and values of their creators. Indeed, CCs can be organised into several classifications.[18] One of the most widely applied in the literature is that put forward by Jerome Blanc, who considers that any CC classification must enjoy some degree of flexibility and focuses on (CC) projects in terms of the guiding principles, values and purposes of monetary projects rather than of their object, namely the means of payment. Following Polanyi's approach, Jerome Blanc (2011) made the distinction between territorial, social and economic projects.[19] Local currencies are territorial projects:

> '(...) they serve first the purpose of defining and strengthening a territory and, eventually, the public local authority which claims for a form of control

[15] E.O. Sanz, 'Community Currency (CCs) in Spain: an Empirical Study of Their Social Effects' 121 *Ecological economics,* 20-27 (2016).

[16] K. Hayashi, 'Rethinking the Significance of Regional Currencies: the Case of the Chiemgauer' 25 *International Journal of Community Currency Research,* 96-106 (2021); C. Gelleri, 'Chiemgauer Regiomoney: Theory and Practice of a Local Money' 13 *International Journal of Community Currency Research,* 61-75 (2009); J. Schraven, 'Mutual Credit Systems and the Commons Problem: Why Community Currency Systems such as LETS Need not Collapse under Opportunistic Behaviour' 5 *International Journal of Community Currency Research,* 4 (2001).

[17] J. Blanc, 'Classifying "CCs": Community, Complementary and Local Currencies Types and Generations' 15 *International Journal of Community Currency Research,* 4-10 (2011).

[18] See A. Di Stasio and I. Pupolizio, 'Complementary Currencies between Public and Private', speech held during the conference in Rome 'The Future of Money: Democracy, Localism and Inclusion', 6-9 November 2024; L. Larue, 'A Conceptual Framework for Classifying Currencies' 24 *International Journal of Community Currency Research,* 45-60 (2020); L.E. Siquera et al, 'Taxonomy of Digital Community Currency Platforms' 25(3) *International Technology Development,* 69-91 (2018); C. Meyer and M. Hudon, 'Alternative Organizations in Finance: Commoning in Complementary Currencies' 17 *CEB Working Paper,* 1-47 (2017).

[19] J. Blanc, 'Community, Complementary and Local Currencies Types and Generation' 15 *International Journal of Community Currency Research,* 6 (2020).

on this territory'

in order to trigger a redistribution process.[20] A second type of project concerns social purposes and social spaces. These projects pursue the 'construction of well-being, empowerment, autonomy and social exchanges of a given community'. Therefore, it is argued that they share reciprocity as the 'guiding principle of the ideal type' of project and they can be built up without reference to economic and territorial dimensions. In the end, monetary schemes pursue economic objectives in a broad sense. Rather than pursuing lucrative objectives, they 'develop action toward what they consider to be general interest', such as protecting or stimulating local trade and re-orienting business activities towards environmental priorities.[21]

Since the goal of this paper is to analyse the regulatory challenges that may arise with CC accommodation, it seems advisable to delve more deeply into a legal analysis of CCs, keeping in mind the above-mentioned classification but making a distinction concerning CCs relationship with the official currency and the banking and financial system. Some CC schemes have no clear link with either of them, such as Redes de Trueque in Argentina, Time Banks in the UK and Time Dollars in the US.[22] There is a second group of CCs with an indirect, loose, connection with them, such as LETS and Sardex – Sardinian Exchange Network. Finally, some CCs have a direct, close, connection with the official currency and banking system, like Chiemgauer in Germany, at least in that they can be converted into official currency and the banking system acts as custodian of the funds – banknotes and coins as well as scriptural money or e-money – exchanged in Chiemgauer currency. These three aspects are analysed in the following two paragraphs, while paragraph 3 refers to CCs currently being developed.

1. No Apparent Connections and Soft Connections

Time Banks and Time Dollars are social currencies, according to Blanc's nomenclature, and they do not exhibit any clear connection with the official currency and the banking system. Both aim to 'build social capital and foster friendships, reciprocity and trust through 'participative engagement'; they 'encourage community involvement', 'improve and promote self-help through mutual volunteering (both giving and receiving help in exchange for time credits)',[23] as well as improve the self-esteem and self-confidence of socially excluded community members. Solidarity

[20] ibid 7.

[21] ibid 9.

[22] The Japanase Furerai Kippu and Time Banks in Italy also exhibit no clear connection with the official currency; their aim is social inclusion and the construction of a sense of community belonging based on a solidarity principle. More details in: M. Fare and P.O. Ahemed, n 9 above, 849.

[23] G. Seyfang, 'Tackling Social Exclusion with Community Currencies: Learning from LETS to Time Banks' 6(3) *International Journal of Community Currency Research*, 1-11 (2002) argued 'a time bank works like a community-level volunteering agency, but with a difference. Unlike traditional volunteering, a time bank sets up reciprocal relationship and all participants should be willing to *ask* for help as well as *give* it to others'.

is their guiding value: indeed, they turn volunteering as unpaid time into a valuable commodity, setting up a system of mutual volunteering in which one hour of volunteer work amounts to one-time credit, whatever the nature or quality of the activity performed. This type of CC is usually set up by non-profit organizations, but sometimes also by local authorities, to pursue social inclusion objectives to carry on social care programmes (for example, those addressed to elderly persons) as well as to develop more deprived areas.[24]

Time bank participants must register with a local database, providing information about the services they wish to offer and the help they will ask for in return, such as gardening, companionship, teaching computer skills, helping with homework, and babysitting. Demand and supply are matched up by a broker, who is also in-charge of managing the system and helping the most vulnerable members identify their abilities.[25] In this CC scheme, time is a valuable asset. The mechanism is clearly explained as follows:

> 'Time Banks credit the time someone works for someone else on a person-hour basis. The credit can be redeemed by accepting the same person's work or someone else's work, for the same amount of time'.[26]

Therefore, Time Banks (and Time Dollars) are fully independent from mainstream banking and the official monetary system.[27]

[24] ibid

[25] More details in G. Seyfang, 'Money that Makes a Change: Community Currencies, North and South' 9(1) *Gender and Development,* 64 (2001).

[26] L. Sartori and P. Dini, 'From Complementary Currency to Institution: a Micro-Macro Study of the Sardex Mutual Credit System' *Stato e Mercato,* II, 273-301 (2016).

[27] A different case in point is Redes de Trueque. It is a CC scheme established in Argentina that falls somewhere in the middle between a social and a local currency and operates with credit units. It is barter market currency established in Argentina in 1995 in the city of Bernal south of Buenos Aires. It became very popular during the first Argentinian crisis of the 1990s and the 2000s and declined around 2005. It was launched by members of non-profit organizations, but the currency was open to all, though it was especially beneficial for people with no income. who had difficulty accessing basic groceries like sugar, oil, tomatoes, and flour. It operates through small, local, markets or nodes, where participants meet to exchange self-produced goods, such as home-made foods, second-hand items, vegetables from the backyard and handcrafted items. Participants in this CC scheme entered a circumscribed marketplace, bringing goods or services to sell, and then received an amount of Trueque corresponding to the value of what they proposed to sell. It was organized in small markets or nodes, each independent from the others in terms of price setting, but all closely connected so as to shift items in excess supply from one to another. Sellers thus earned credit units to be spent in these markets to buy whatever they needed. Values were neither set in advance nor based on the prices of products in pesos, but were established by traders. However, when prices in Trueque were perceived as too high - especially for groceries - the organizers of the CC put pressure on sellers to lower the prices, and advised participants not to buy until the prices were reduced. See, C. Meyer and M. Hudon, 'Alternative Organizations in Finance: Commoning in Complementary Currencies' 24 *Organization,* 629-747 (2017). G.M. Gomez, 'Price Setting Mechanisms in Complementary Currencies in Argentina's Redes De Trueque' 19 *International Journal of Community Currency Research,* 42-52 (2015) emphasises that the price mark-up for groceries purchased in the market in pesos and resold in Trueque was generally not speculative, because, as the participants interviewed emphasized,

The second typology of CC exhibiting lax connections with the mainstream economic and monetary systems, either mimics the price-setting market approach or establishes an indirect but valuable connection with the legal currency. This comprises LETS as the paradigmatic monetary experience in the Mutual Credit System (MCS) model, and Sardex or Sardinian Exchange Network taking a further step in the development of the MCS model as elaborated on below.

LETS has been defined as a 'pure accounting system of exchange', with no cash issuance. To some extent, LETS is comparable to Time Banks. Both systems feature a central administration of members who list the products or services they offer in a centralised directory, and both provide participants with a CC account where in-flows and out-flows are recorded. However, while Time Banks have a professional broker in charge of arranging trades and searching the member database to find matching offers, LETS is run on a voluntary basis by community activists.[28] In a LETS system, money is created through exchanges: there is no initial stock of cash since

> 'every individual account (...) goes up and down; it is credited when the individual 'gives', and debited when he or she 'receives'. The currency does not exist before trading begins: the two are consubstantial'.[29]

Generally, with LETS, no interest is charged on negative and positive balances, and no one is bound to trade. Participants are free to accept or refuse offers and can easily check a purchaser's balance and turnover 'as a proxy for creditworthiness' since there is no bank secrecy. While both LETS and Time Banks pursue social inclusion, LETS more closely mimics the conventional market system and establishes a connection between CC and the official currency system. In fact, LETS credits are equated with official currency (one LETS credit amounts to one euro, for example) but its members are in-charge of finding matches in the network for themselves as well as making deals on the price of what they buy or sell. Therefore, to some extent, LETS systems take a market-based approach. This, according to some authors, makes LETS income as taxable.[30]

they were aware that prospective buyers could not pay more. However, labour input was remunerated less in the Trueque circuit than in the peso economic system, with item prices often set differently depending on the prospective buyer, and whether sellers and buyers got along well.

[28] G. Seyfang, n 23 above, 2, who underlines that one of the limits to LETS is dissatisfaction with the refusal to perform activities listed in the directory.

[29] J. Blanc, n 8 above, 303-312.

[30] 'One of the key reasons for this distinction in character and context is the different policy response time banks have prompted. LETS was presented as an alternative money with an economic objective, and was perceived by government primarily as a tool for promoting informal employment. Consequently, benefit regulations treat LETS earnings as equivalent to money (with a small allowable amount each week but still inhibiting participation by benefit-recipients) and so LETS income is taxable if it is earned during the course of one's normal profession (otherwise it is disregarded as social favours). In contrast, and quite deliberately, time banking was presented as a social initiative and the time currency aspect was downplayed. Instead, time credits are likened to loyalty points

Among the working examples of LETS is Sardex. According to Blanc's classification, Sardex is an economic project for local development having in mind and is still the aims and goals of its original project and membership criteria. When Sardex was launched in 2009, its founders stated that they strived to deliver

> 'a response to the dire economic conditions Sardinia was facing. (...) Clearly, the founders had in mind a different type of economic system, not dominated only by the market competition, but one aiming to achieve enough growth for a better and sustainable future for the community'.[31]

In the beginning, only businesses operating in Sardinia were eligible to be members – all types of businesses, but mainly small and medium enterprises although members' employees could participate if they agreed to receive part of their salary in Sardex credits.[32]

Like LETS, the Sardex scheme is a mutual credit system (circuito di credito commerciale) based on a double-bookkeeping mechanism. Specifically, each member holds an account, and the centralised ledger is managed by the Sardex limited liability company. The company is committed to facilitating the development of local small and medium enterprises (SMEs) between previously unacquainted participants by matching supply and demand among the Sardex SME members through a centralised ledger.[33] Also, as with LETS, Sardex business members are allowed to start trading with a zero credit balance, since money is created in the exchange. Sardex credits are issued whenever a member goes into debt by paying for a product or a service provided by another circuit member. The Sardex mechanism can be explained as follows:

> 'assuming Company A has gone negative to a balance of -100 credits by purchasing something from Company B, the balance of Company B has now become +100 credits. Therefore, Company A has created 100 credits. The products and services that Company A will sell over the subsequent 12 months constitute the backing for the 100 credits that were just created'.[34]

for neighbourliness. As a result, time banking has been viewed by government as a tool to encourage volunteering and community self-help, and time credits have been declared exempt from either taxation or benefit calculations'. G. Seyfang, n 23 above, 5.

[31] L. Sartori and P. Dini, n 26 above, 275.

[32] Recently, Sardex has also developed a B2C product delivered through the same platform. See: T. Fleischman et al, 'Liquidity-Saving through Obligation-Clearing Effective Monetary Innovation for SMEs in Times of Crisis' 13 *Journal of Risk and Financial Management,* 295 (2020).

[33] Over time, Sardex has become the business model for many other comparable monetary schemes.

[34] G. Littera et al, 'From an Idea to a Scalable Working Model Merging Economic Benefits with Social Values in Sardex' 21 *International Journal of Community Currency Research,* 6-21 (2017). As in LETS schemes, in the Sardex scheme the sum of all positive and negative balances is always equal to zero.

Since no interest is accrued on a positive balance and no interest is charged on a negative balance, Sardex members have no incentive to save money and should be more motivated to invest in new business lines and products. Each member agrees to accept about 10% of their turnover in Sardex credits, by selling their products and services to other Sardex members. In turn, each business member enjoys a credit line assigned to it by the Sardex circuit manager amounting to approximately 2% of its turnover. When a membership agreement is made, the business is vetted by the central administrator (for example, the Sardex limited liability company and its managing directors), looking, for example, at turnover and company history. Since part of the Sardex rationale is the aim to speed up money circulation, a maximum limit to the number Sardex credits each participant may hold is also set.[35]

Interestingly, Sardex has a double connection with the official economic and monetary system.[36] It is pegged to the euro at a one-to-one-ratio, although no Sardex-to-euro convertibility is allowed. In addition, there is an interesting approach to participants' liquidity risks: if a negative balance is not cleared within 12 months, the participant must fulfil its obligations in euros.[37]

2. Close Connections

Chiemgauer was launched as a Waldorf school project in 2002. Over time, it has become a regional CC system.[38] Under Blanc's classification, Chiemgauer is an economic project since it complies with market principles and aims to project, stimulate or orient the economy of a local community, namely the Chiemgau region between Munich and Salzburg. Consistent with Blanc's approach, the Chiemgauer scheme is non-profit: any surplus is spent on education, research, and development within the Chiemgauer circuit. The Chiemgauer scheme also aims to improve money velocity through a negative interest mechanism based on a rate of 6% in the area covered, in order to make money circulate more easily among businesses and non-profit organizations based in that territory.[39]

[35] ibid

[36] Sardex income should be taxable like any LETS income.

[37] L. Sartori and P. Dini, n 25 above, 270.

[38] C. Gelleri, 'Chiemgauer Regiomoney: Theory and Practice of a Local Currency' 13 *International Journal of Community Currency Research,* 61-79 (2009); Id 'Reshaping the Future of Europe with Complementary Currencies' *European Papers*, II, 1015-1025 (2021); Id and J. Stodder, 'Chiemgauer Complementary Currency – Concept, Effect, and Econometric Analysis' 25 *International Journal of Community Currency Research,* 75-95 (2021).

[39] This means that Cash Chiemgauer is only valid for six months, but the holder may prolong this period for another six months by buying a sticker which costs 3% of the nominal value of Chiemgauer. On the whole, Chiemgauer is valid for three years and it works as follows: 'If you have a 10-Chiemgauer-note which was valid through June 30th in August, you buy a sticker for 30 Cents and stick it onto the note. Then you can spend the Chiemgauer until December 31st'. On this point see: C. Gelleri, 'Democratizing Money. The Chiemgauer Community Currency as a Collectively Designed Money' available at https://tinyurl.com/49jd75n7 (last visited 31 January 2026).

Chiemgauer is organised as a consumer-to-business CC: anyone who wants to use Chiemgauer becomes a Chiemgauer member, paying a small annual membership. As members, consumers and businesses alike are entitled to vote in the non-profit organization's general meeting on a one-person-one-vote basis. Chiemgauer distribution is managed by a small company controlled by Chiemgauer members, while the data centre is organised as a cooperative and is in charge of handling transactions and accounting of the currency.

Now, the connection between the Chiemgauer scheme and the official monetary system is much clearer. Chiemgauer does not pretend to replace the official currency, since there is a one-to-one Chiemgauer-to-euro ratio, and euro banknotes and coins or scriptural money exchanged in Chiemgauer are deposited in a credit institution through which final settlement operations are carried out. Indeed, Chiemgauer currency is issued through a loan or, more frequently, through an exchange from euro to Chiemgauer, at a one-to-one ratio. The payment procedure is comparable to a traditional credit or debit card payment. It requires a PIN and operates through Chiemgauer software that recognises whether the payer holds a Chiemgauer account or a euro account. When the payer has a euro account, the Chiemgauer software automatically makes the exchange (euro into Chiemgauer) and transfers the Chiemgauer credits to the payee's Chiemgauer account. However, it is the member bank that holds the euro funds exchanged for Chiemgauer credits and executes the payment order whenever a trading member asks to convert Chiemgauer credits into euros. In this last case, negative interest is applied. Businesses can request conversion, but must pay a charge of 5%, plus value added tax, for the exchange. This exchange-back charge is broken down as follows: 60% goes to a non-profit project chosen by the customer at the time of joining the Chiemgauer organization, while 40% goes to cover Chiemgauer's project expenses.[40]

3. The Way Forward

An overview of CC schemes reveals a large number of CC schemes with varying degrees of connection with the official economic and monetary system and the financial institutional framework. Some of them are non-profit organizations, such as Chiemgauer, while others are organised as spin-offs of local municipalities or regional governments.[41] Others are set up as limited liability companies and for-profit organizations, like Sardex SPA.

CCs seem to be a growing social and business phenomenon. Some authors

[40] 'For 100 Chiemgauer a business gets 94.05 euro. Three euro go to the project, 2 euro are for the operating expenses and 0.95 euro is paid to the tax office (value added tax)'. See C. Gelleri and J. Stodder, n 35 above, 79. With payment procedures, 3% of the amount is credited for a non-profit project chosen by the consumer, but the recipient non-profit organization must also spend the same sum of Chiemgauer in the CC circuit.

[41] See, for example, Almócita in the province of Almería. More details in: F.J. García-Corral et al, 'Complementary Currencies: an Analysis of the Creation Process Based on Sustainable Local Development Principles' 12 *Sustainability,* 1-22 (2020).

have estimated that between 35,000 and 45,000 CC initiatives have been created in more than 50 nations since the 1980s.[42] For example, Chiemgauer has recently launched a special purpose climate bonus CC covering the city of Marburg,[43] while Sardex has grown from a SME set up as a società a responsabilità limitata (SRL) into a società per azioni (SPA) with holdings in several regional schemes based in Italy.

This growing trend is facilitated by blockchain structure. In fact, several CC schemes are planning to launch crypto-CCs, such as Impak Coin and e-leman from Monnaie Léman. Some assert that the shift to crypto might bring down production costs improving CC efficiency because it eliminates the cost of the middle-man.[44] However, there are various opposing arguments. Critics contend that IT tools may hinder the development of social ties among community members. More broadly, blockchain technology - with its decentralised issuance and validation process - is seen by some as a mechanism that reduces the accountability of key market actors, such as software developers and miners. As a leading expert argued a couple of years ago,

> 'in proof-of-work systems such as Bitcoin and (currently) Ethereum, whoever controls the validation process, and is able to block transactions from being entered onto the blockchain or even alter old entries on the blockchain (sometimes referred to as blockchain "reorg")'.[45]

Other critics take a different view, arguing that

> 'computerization or virtualization does not always mean deterritorialization. It opens up opportunities, for sectors from which players may be geographically distant, for traders who will not have to invest in any specific equipment or account management, without opposing local relationships or feeling of community belonging'.[46]

However, there is another regulatory issue hovering in the background, ie the consistency between some forms of governance and organisation and the traditional goals of CCs, namely, financial inclusion, local development, or environmentally-friendliness that make CC schemes prospective beneficiaries of social development and regional cohesion funding.[47]

[42] See: C.T. Ba et al, 'Cooperative Behaviour in Blockchain-Based Complementary Currency Network through Time. The Safaru Case Study' 148 *Future Generation Computer Systems,* 266-279 (2023).

[43] C. Gelleri, n 14 above, 14.

[44] See, for example, L. E. Siquera et al, n 18 above.

[45] A. Walch, 'Deconstructing "Decentralization". Exploring the Core Claim of Crypto Systems', in C. Brummer ed, *Cryptoassets. Legal, Regulatory, and Monetary Perspectives* (Oxford: Oxford University Press, 2019), 39–68.

[46] F. Pinos, 'How Could Blockchain Be a Key Resource in the Value Creation Process of a Local Currency? A Case Study Centered on Eusko' 24 *International Journal of Community Currency Research*, 1-13 (2020).

[47] In fact, no ad-hoc law rule has been set out, despite CC schemes being covered by

III. CCs in the EU Framework: The Regulatory Field

CCs are simultaneously limited-accepted means of exchange, value of money (namely, the unit of account), and above all payment systems that may take different legal forms, from limited liability companies, to cooperatives, to non-profit organisations or partnerships. They share these functions with money, but the reserve function pertaining to money is slightly jeopardised in the case of CCs, since such projects aim to increase the speed of money circulation. The above literature overview has explained how CC schemes work, but the main point to understand here is what CCs are in legal terms.

In the EU framework, there is no definition of money to be used as a regulatory yardstick. Money is mainly addressed as a means of exchange, or in other words, as an asset recognised by law as a means of discharging monetary obligations. European lawmakers have sought to remove internal barriers to the transfer of funds to establish an internal market for payments. The policy priority has always been to achieve this objective more swiftly. This is why European lawmakers, rather than making a clear-cut choice on the legal definition of money—which could clash with the civil laws of EU Member States—have defined the concept of funds as covering banknotes and coins, bank money, and electronic money.[48] In this context, the harmonization process for payments has focused on the approximation of authorization and prudential supervision requirements, information requirements, and, more recently, the rights and obligations related to the provision of payment services, with a view to promoting financial stability and consumer protection.[49]

As long as CCs exhibit a material link with the conventional monetary and economic system, they may raise regulatory challenges. Generally, there are two relevant legal issues: 1) compliance with the legal framework for regulated businesses, namely, the banking business concerning the provision of payment services, the issuance of e-money and e-money tokens, as well as crypto-asset activities closely linked to the issuance, trading and transfer of asset-referenced tokens and e-money tokens; and 2) the risk of market fragmentation *vis-a-vis* the thirty-year harmonization strategy of removing internal frontiers.

1. The Area of Regulated Businesses

CCs challenge the EU legal framework for the operation of banking business,

programmes of social cohesion and local development conducted by the European Regional Development Fund and the Erasmus Plus Programme.

[48] It is likely that, in the revision of PSD2, the concept of funds will also cover an e-money token. It is 'a type of crypto-asset that purports to maintain a stable value by referencing the value of one official currency'. This definition is laid down in the MICA Regulation (MICAR), namely, European Parliament and Council Regulation 2023/1114/EU of 31 May 2023 on markets in cryptoassets [2023] OJ L150/40.

[49] See European Parliament and Council Directive 2015/2366/EU of 25 November 2015 on payment services in the internal market [2015] OJ L337/35 (PSD2).

the provision of payment services, and the issuance and reimbursement of e-money and e-money tokens. EU lawmakers treat CCs as regulated businesses, which means that any business entity intending to operate within the banking sector, provide payment services or issue e-money or e-money tokens must obtain a license and be subject to the supervision of their home state authority. Consequently, issuers of CCs are also expected to comply with corporate governance standards and maintain financial thresholds on an ongoing basis. At the same time, any entities engaging in these business activities without proper authorization may be subject to criminal sanctions.[50]

The central issue is to determine the extent to which CC schemes effectively challenge the existing authorisation system, keeping in mind that: i) banking activity involves taking title over deposited money as well as any reimbursable funds; ii) the issuance of e-money consists of exchanging banknotes, coins, or scriptural money for a digitally or electronically stored monetary value represented by a claim on the issuer, which is accepted as a means of payment by business by entities other than the issuer; and iii) the management of payment systems[51] does not require authorisation, although it remains subject to the oversight and regulatory powers of the monetary authority.

Ultimately, both e-money products and payment instruments with a limited scope, fall outside the framework of banking and payment law, as long as they are accepted as a means of payment only on the premises of the electronic money issuer, within a limited network of service providers under direct commercial agreements with a professional issuer, or because they can be used only to acquire a limited range of goods or services.

If this is the legal framework for CCs to navigate, appearances can be deceiving, as the formal structure of a CC scheme may differ from its actual functioning. This is exemplified by regional CC schemes like Chiemgauer. As explained above, Chiemgauer is a consumer-to-business monetary scheme where the CC is issued either through lending or by converting euros or bank money into Chiemgauer credits at a one-to-one exchange rate with the euro. In the case of the digital form, Chiemgauer participants hold a Chiemgauer payment account and can initiated transactions using a Chiemgauer debit/credit-like card. This operational structure suggests that the Chiemgauer scheme functions like a bank or, at a minimum, a payment service provider.

On closer examination, it becomes evident that Chiemgauer actually primarily serves two functions: loyalty and governance. In contrast, the private monetary system is structured around a member bank – either a cooperative or a savings bank – operating exclusively on a regional basis to meet long-term and large-scale credit

[50] The authorisation process entails that business entities must comply with the prescribed legal form, as well as with the statutory financial and corporate requirements, from their establishment through to their dissolution, and remain subject to the informational, regulatory, and inspectional supervision of the administrative authority that granted the authorisation.

[51] European Parliament and Council Directive 2015/2366/EU Art 4, no 7.

needs. Specifically, the member bank is responsible for: (i) holding euro funds exchanged for Chiemgauer credits; (ii) executing payment orders when a member trader asks for reimbursement; and (iii) providing loans. Regional member banks agree to comply with Chiemgauer rules, including provisions such as applying negative interest on account balances and facilitating donations to the non-profit association chosen by the consumer-payer, with funds paid out by the trader-payee. In turn, the Chiemgauer-non-profit organization is responsible for exchanging euro banknotes and coins for Chiemgaeuer credits and setting up the network of traders and consumers that manage the democratic governance of the CC scheme. However, if Chiemgauer were to become an unlimited means of payment, this CC scheme could be viewed as a regulatory mechanism designed to circumvent the law, or in other words, as a way of sidestepping the banking or payment service license mechanism.[52]

As for Sardex-like CC schemes, no authorisation is needed as for a credit institution, payment institution or electronic money institution. Indeed, they are structured as online and offline mutual credit systems, where a limited liability company manages the credit-clearing service, the IT infrastructure and the loyalty function. Valore Sardex s.r.l is the parent company of Sardex S.p.A., and Sardex S.p.A. is committed to managing a commercial credit circuit. It seems that Sardex S.P.A. facilitates exchanges among the circuit's members and, among other things, manages the clearing and settlement of its members' monetary obligations in Sardex (credits). However, some residual doubts about this should be addressed.

First, this CC model is based on solidarity, reciprocity, and bottom-up governance. However, regarding Sardex's activity and organization, it has been noted that

> 'a more participatory governance framework with an advisory board drawing on network members is one of the organizational innovations Sardex is currently considering'.

In other words, member participation in Sardex governance was very limited, so there was no material difference between Sardex and a private corporation.[53] Indeed, to what extent might SMEs, as the circuit's members, influence Sardex S.p.A.'s policy decisions? Also, to what extent could informal governance fill this democratic gap?[54] Second, Sardex is engaged in profit sharing and in taking stakes in other companies operating the same or similar activities, and it is not clear whether this is consistent with the CC model put forward in the literature and how this might facilitate the mission of local development (in Sardinia). Finally, it is

[52] The monetary function is reserved for commercial banks, since policymakers, through central bank activity and on the basis of the banking legal framework for capital ratios, own funds, and have reserve requirements, may control the composition of the monetary basis, credit access and economic stability.

[53] C. Meyer and M. Hudon, 'Money and the Commons: an investigation of complementary currencies and their ethical implications' *Journal of Business Ethics,* 284 (2019).

[54] In fact, the founders of Sardex were born in Sardinia and continued to reside there. This circumstance initially prompted a broad process of informal governance and control.

disputable whether the broader use of Sardex beyond its original scope is consistent with Art 3(k) of PSD2. This provision excludes an entity from the scope of PSD2 as long as the payment instrument has a limited territorial or functional scope and can only be used within a single Member State at the request of a public sector entity or an organisation for specific social or tax purposes to enable the acquisition of goods or services from sellers who have an agreement with the issuer.[55]

2. The Potential Challenges to the Internal Market

CC schemes could become a new form of legal and economic barrier to the free flow of payments in all Member States since they are associations of undertakings or agreements among undertakings. Therefore, B2B CC schemes may affect trade between Member States and may tend to prevent, restrict or distort competition, depending on the retail price incentives the participants agree upon. In such a situation, the first step is to assess whether the association or limited liability company qualifies as an undertaking, and if so, whether or not it is exempt under the 2014 Commission Notice on agreements of minor importance. There is, however, no specific legislative definition of an undertaking in EU competition law.

First, CCs may fall outside the scope of EU competition law if they are not considered undertakings. The definition of an undertaking is judicial rather than legislative. The Court of Justice of the European Union (CJEU) has held that

> 'The concept of an undertaking encompasses every entity engaged in an economic activity, regardless of the legal status of the entity and the way it is financed'.[56]

This means that companies are not automatically considered undertakings owing to their legal status. In contrast, associations may be considered undertakings although they lack legal personality.[57]

Moreover, the Commission states that being considered an undertaking does not amount strictly to being a profit-making entity:

[55] In the European Parliament and Council Directive 2015/2366/EU, the preamble (13) provides that 'first, for the purchase of goods and services in a specific retailer or specific retail chain, where the entities involved are directly linked by a commercial agreement which for example provides for the use of a single payment brand and that payment brand is used at the points of sale and appears, where feasible, on the payment instrument that can be used there; second, for the purchase of a very limited range of goods or services, such as where the scope of use is effectively limited to a closed number of functionally connected goods or services regardless of the geographical location of the point of sale; or third, where the payment instrument is regulated by a national or regional public authority for specific social or tax purposes to acquire specific goods or services'. Therefore, payment instruments covered by the limited network exclusion include store cards, fuel cards, membership cards, and parking ticketing (Preamble 14). More details in: EBA, Final Report. Guidelines on the limited network exclusion under PSD2, 24 February 2022, available at https://tinyurl.com/yrextuyf (last visited 31 January 2026).

[56] V. Louri, '"Undertaking" as a jurisdictional element for the application of EC competition rules' 29(2) *Legal Issues of Economic Integration,* 143–176 (2002).

[57] ibid 148.

> 'while the very intent of the profit making and the earning power of the given entity are not necessary in order to qualify that entity as an undertaking, the element of concluding contracts (between the said entity and other persons) that should provide for some form of remuneration or consideration must nevertheless still be present. Thus, an entity must carry on some activity against payment, irrespective of who bears the economic burden of that payment (the recipient of a given service or a public budget in the form of subsidies) and regardless of whether this payment covers all of the costs involved, or not'.[58]

Accordingly, the way the solidarity principle is applied matters greatly. It does not automatically exclude the economic nature of the activity performed by an entity (with or without legal personality). Indeed, adopting a substance-based approach, the CJEU has determined that an undertaking has an activity, with a strong presumption of economic as activity whenever it faces actual or potential competition by private companies. In cases such as *Poucet and Pistre*,[59] quoted above, where social security schemes operate in a manner that disconnects the amount of benefit received from contributions made by beneficiaries, the organisation involved is deemed to be non-profit and, as a result, has no economic nature and thus falls outside the scope of EU competition law.

Second, although CC schemes may be considered undertakings, they do not fall under Art 101(1) Treaty on the Functioning of the European Union (TFEU) as they meet the market threshold laid down in the Commission Notice on agreements of minor importance. This may be the case for CC schemes with agreements or association decisions that could affect trade between Member States and influence the prevention, restriction or distortion of competition within the internal market, but do not appreciably restrict competition as outlined in Art 101(1) TFEU as the aggregate market share held by the parties to the agreement (or the individual market share of the parties to the agreement) does not exceed the threshold set for any of the markets concerned.[60] Ultimately, CCs should be regarded as small businesses – assuming then that they qualify as undertakings under competition law – raising questions about how potential connections among different CC schemes might impact this assessment. For instance, consider the case of corporate structure links among various schemes where the same fieldworkers or project leaders are involved in CC projects with a shared objective across different territorial areas,

[58] M. Szydlo, 'Leeway of Member States in Shaping the Notion of an "Undertaking" in Competition Law' 33(4) *World Competition*, 549-568 (2010).

[59] Joined Cases C-159/91 and C-160/91 *Christian Poucet* v *Assurances générales de France (AGF) and Caisse mutuelle régionale du Languedoc-Roussillon (Camulrac), Daniel Pistre* v *Caisse autonome nationale de compensation de l'assurance vieillesse des artisans (Cancava),* [1993] ECR I-637.

[60] EU Commission, Notice on agreements of minor importance which do not appreciably restrict competition under Art 1011(1) of the Treaty on the Functioning of the European Union, OJ [2014] C/291.

as is the case with *Klimatebonus*.[61]

IV. The Constructive Stage: Combining the Vertical with the Horizontal Subsidiarity

Regulation could provide CCs not only with limits and burdens, but also with a sound accommodation within the legal framework. Hence, this section, assuming that the CC schemes in question comply with the legal limits outlined above, aims to establish whether the EU monetary framework leaves room for granting private parties – citizens groups, associations, corporations – the authority to issue currency. This is what is known as horizontal subsidiary and concerns the division of private and public powers in the exercise of monetary sovereignty. According to the principle of horizontal subsidiarity, public power – primarily the State – is empowered to intervene only when individuals and social groups have demonstrated their incapacity to act effectively.[62]

According to Art 5(3) of the Treaty on the European Union (TEU), it seems that the principle of subsidiarity to be dealt with is only vertical subsidiarity, which governs the allocation of powers between different levels of public authority in accordance with a polycentric model of governance.[63] In other words, while at first glance monetary sovereignty seems to be distributed solely in public-to-public relationships, upon closer examination the commercial banking system also shows a pervasive influence of public authorities. Indeed, commercial banks are empowered to take up reimbursable deposits and other reimbursable funds from the public to extend credit as long as they meet strict capital ratios, own funds thresholds, and meet governance standards, under the prudential supervision either of the European Central Bank or the national supervisory authority. In other words, commercial banks *create* private money with the protection of some degree of State backstop, but the *public* steers the credit function indirectly by way of banking regulation and monetary policy.[64] Although monetary sovereignty powers have been allocated either at the Member State level or at the Union level, or shared between the two according to a public-to-public paradigm, looking beyond Art 5(3) TEU, a way of accommodating the horizontal subsidiarity principle may be found.

1. Money Legal Theories and the EU Framework

Taking some steps backwords, the point is to establish the legal concept of money in the EU framework. This requires to ascertain whether the harmonisation

[61] Joined Cases C-422/19 and C-423/19 *Johannes Dietrich, Norbert Häring* v *Hessischer Rundfunk*, Judgment of 26 January 2011, available at www.eurlex.europa.eu, para 2.

[62] A.Q. Curzio, 'Riflessioni sul principio di sussidiarietà' *Politiche sociali e servizi*, I, 9-15 (2005).

[63] S. Moroni, n 6 above, 466.

[64] S. Muran and J. Klooster, 'Rethinking monetary sovereignty: the global credit money system and the State' 21(4) *Perspectives on Politics*, 1319-1336 (2023).

process for payments induced EU lawmakers to make a clear-cut choice[65] – at least in the Eurozone context - among the State, the societary and the institutional theory of money, since there is no statutory definition of money.[66]

The State theory of money is the most traditional approach and maintains that money is a product of law: 'only those chattels issued by or on behalf of the State are money which are denominated with reference to a distinct unit of account'.[67] This means that the concept of money amounts to the concept of legal tender and comprises only banknotes and coins denominated in the monetary value chosen.[68]

By contrast, in the institutional theory the role of legal tender in terms of euro banknotes and coins is dealt with as an obsolete concept.[69] Here, money is considered as a direct or indirect claim against a central bank as well as the whole Eurosystem.[70] This approach prioritises the role of the central bank as a monetary policy authority and consistently maintains that the concept of money is closely connected with the central bank set-up, in terms of structures, organization, rules, and, monetary policy instruments, since money is a value that 'measures the value of goods and services by way of the standardised unit; for this it has to be an instrument able to retain value over a period of time'.[71] This means that, as for private law relationships, scriptural money like banknotes and coins are irrefutable means of exchange.

In the context of the harmonization process for payments, it seems that the institutional theory prevails over the State theory, at least in the Eurozone. Indeed, with a view to removing the legal barriers to the flow of funds throughout Member States, the EU regulatory strategy strived to make euro scriptural money a universal means of payments by dint of it: (a) being able to discharge monetary obligations; and (b) 'leaving neither the seller nor a third party, who may have given credit to the buyer, with a further claim on the buyer'.[72] To this end, the harmonisation process combined command and control rules with self-regulation and incentive-based regulation, as well as antitrust action. It pursued a two-fold objective: firstly, removing the retail price and timeline difference between cross-border and national

[65] As long as the harmonisation process takes a full harmonisation approach, the leeway of Member States will gradually be reduced.

[66] An overview of the three theories in: C. Proctor, *Mann on the legal aspect of money* (Oxford: Oxford University Press, 6th ed, 2005), 5–55.

[67] F.A. Mann, n 1 above, 8.

[68] 'The acceptance of euro banknotes and coins as means of payments in retail transactions should be the rule. A refusal of them should be only possible if grounded on reasons related to the "good faith principle"' (Commission Recommendation 2010/191/EU of 22 March 2010 on the scope and effects of legal tender of euro banknotes and coins (OJ 2010 L 83 70).

[69] A. Sáinz de Vicuña, n 64 above, 521.

[70] ibid 517.

[71] A. Sáinz de Vicuña, 'An institutional theory of money', in M. Giovanoli and D. Devos eds, *International monetary and financial law. The global crisis* (Oxford: Oxford University Press, 2010), 517.

[72] C. Goodhart, 'The Development of Monetary Theory', in D.T. Llewellyn and L. Ezra eds, *Reflections on Money* (London: Palgrave MacMillan, 1989), 25–36.

credit transfers and direct debits, according to the principle of indifference of the country of origin (of the payment order), as well as achieving full reachability of bank accounts;[73] and secondly, the antitrust law experience dealt with payment systems as vertically-integrated networks being able to act as normative entities making normative choices with top-down and binding effects on the payee-payer monetary obligation.[74]

However, it follows from the CJEU judgment that institutional theory co-exists with the State theory of money, and which still prevails in the EU legal framework. Indeed, in *Johannes Dietrich, Norbert Häring* v *Hessischer Rundfunk*: the CJEU held that in the Eurozone, monetary policy is not limited to operational implementation but also entails a regulatory dimension aimed at guaranteeing the status of the euro as the single currency.[75] According to the CJEU the effectiveness of monetary policy depends also on the singleness of the euro as legal tender in the payee-payer legal relationships, throughout the Member States. However, this does not exclude Member States from statutorily limiting payments in euro notes and coins as long as this choice: (a) does not lead, 'in law or in fact', to abolition of those banknotes, 'by calling into question the possibility, as a general rule, of discharging a payment obligation in cash'; (b) is based on public interest grounds; and (c) is appropriate and proportionate to the objective concerned.[76]

Therefore, at the EU level, the concept of money implies not only reference to a value-purchasing power but also to a form, in terms of banknotes and coins. Bank money is thus still a refusable means of exchange and does not amount to legal tender in the process of discharging monetary obligations.

Finally, there is the societary theory of money. This theory takes a functional approach and maintains that it is the 'usage of commercial life of the confidence of people which has the power to create or recognise "money"'.[77] This approach provides for a broader concept of money comprising not only bank deposits but also government debt securities, bank acceptances and government obligations with short maturity.[78] To some extent, EU lawmakers make room for the societary theory whenever – for example – they permit a shadow banking system. This is a specific form of market-based financing that can either complement or substitute traditional banking credit, as in the case of money market funds and corporations engaged in leasing, factoring, and hire purchase.[79]

Money market funds (MMFs) seem to be an interesting example. They are

[73] A. Janczuk, 'Sources of EU Payments Law', in G. Gimigliano ed, *Money, payment systems and the European Union* (Newcastle upon Tyne: Cambridge Scholars Publishing, 2016), 2–23.

[74] More details in: G. Gimigliano, 'The payment system as a `normative paradigm´ in the European harmonisation process' 38 *Banking and Finance Law Review,* 108-113 (2022).

[75] n 61 above.

[76] ibid para 29.

[77] C. Proctor, n 6 above, 23.

[78] ibid 13: this is the case of the Agreement of the International Monetary Fund.

[79] https://tinyurl.com/3rca5trt (last visited 31 January 2026).

defined as

> 'transferable instruments normally dealt in on the money market and include treasury and local authority bills, certificates of deposits, commercial papers, bankers' acceptances, and medium or short-term notes. Money market instruments should be eligible for investment by MMFs only insofar as they comply with maturity limits and are considered by an MMF to be of high credit quality'.[80]

With MMFs, the Union accepts market governance development and is carrying forth a harmonization process to enhance the stability of this form of shadow banking as a source of short-term financing for corporate sector funding across the Union: MMFs, listed as financial instruments, are viewed as a 'reliable tool for the cash management needs of industry in the Union'.[81] Beyond the scope of shadow banking, there are asset-referred tokens, established in the MICAR.[82] Although performing a payment function under the MICA framework, they may be pegged not only to official currencies but also to tangible and intangible assets, including movable and immovable property as well as to crypto-assets.[83] Therefore, as long as European Union regulatory strategy leaves room for the societary theory of money, it provides for public-to-private allocation of monetary sovereignty and promotes monetary pluralism.

The next step is to establish whether the horizontal subsidiarity framework applies solely to profit-making businesses - like issuers of asset-referenced tokens or money market funds- or whether it may also extend to third-sector initiatives like CC schemes.

2. Addressing CCs from the Standpoint of the Societary Theory of Money

The analysis of monetary theories in the EU legal framework has already demonstrated that there is monetary pluralism at the EU level through the use of euro banknotes and coins, central bank reserves, scriptural money and money-like products. Consistently, the harmonisation process for payments prioritised legal tender, resorting to scriptural money as a means of building up the internal market and allowing a third category of monetary products with varying degrees of 'moneyness' – as Arthur Nussbaum argued (1950) – and lying somewhere between

[80] European Parliament and the Council Regulation 2017/1131/EU on money market funds of 14 June 2017 [2017] OJ L/169 (thereafter, MMFs Regulation): preamble (21).

[81] Recital (8), MMFs Regulation.

[82] European Parliament and of the Council Regulation 2023/1114/EU oof 31 May 2023 on markets in crypto-assets amending regulation (EU) No 1093/2010 and (EU) No 1095/2010 and directives 2013/36/EU and (EU) 2019/1937 [2023] OJ L/40.

[83] Compare nos (6) and (7) of Art 3, MICAR. There, at no (8), the definition of official currency is 'the official currency of a country that is issued by a central bank or other monetary authority'.

money and non-money.[84] From the standpoint of the subsidiarity principle, this means that there is not only a public-to-public allocation of monetary sovereign powers but also a public-to-private allocation of monetary sovereign powers. Therefore, the question is whether CC schemes might also be allowed to develop side-by-side with for-profit initiatives like asset-referenced tokens or MMFs.

Taking a forward-looking regulatory approach, the affirmative answer requires EU policymakers to make a specific choice to encourage a different economic model as well – the civil economy approach – since CCs deal with money as a commons[85] and are based – to varying degrees – on reciprocity and solidarity principles.[86] Indeed, in the civil economy, 'the personal identities of the persons involved is a constituent of the relation itself', the community is no longer a fictitious body, and the relational perspective is based on reciprocity rather than on exchange. Here, the principle of horizontal subsidiarity is closely connected with the principle of reciprocity. In fact, it is argued that in a civil economy the

> 'principle of subsidiarity emanates from a more fundamental anthropological principle, according to which the human being is more than just an individual (a distinct and self-sufficient reality); he/she is above all a person who becomes fully himself/herself only within the context of reciprocal relationships with others'.[87]

Although there is no mention of horizontal subsidiarity in EU treaties, in preparatory works leading up to the Maastricht Treaty, Jacques Delors argued that subsidiarity is not only a

> 'limit on the intervention of a higher authority in the affairs of a person or a community which can act itself, it is also a duty of this authority to act in relation to that person or community in such a way as to give it the means to fulfil itself'.[88]

[84] A. Nussbaum, Preface to the first edition of Id, *Money in the law national and international. A comparative study in the borderline of law and economics* (Brooklyn: The Foundation Press Inc, 1950).

[85] The business and management literature treat money as financial commons, with the common paradigm taking a constructivist rather than an essentialist approach 'based on the idea that commons are socially constructed through specific collaborative organizational and institutional arrangements', C. Meyer and M. Hudon, 'Money and the Commons: An Investigation of Complementary Currencies and Their Ethical Implications' 160(1) *Journal of Business Ethics*, 290 (2019); C. Meyer, 'Social finance and the commons paradigm' 58 *Management Decision,* 786-796 (2020).

[86] C. Meyer and M. Hudon, n 53 above, 280.

[87] S. Zamagni, 'Reciprocity, Civil Economy, Common Good', in M. Archer and P. Donati eds, *Pursuing the Common Good* (Vatican City: Pontificial Academy of Social Sciences, 2008), 467–502.

[88] Steering Committee on Local and Regional Authorities (CDLR), Definition and limits of the principle of the subsidiarity, Council of Europe, Brussels, 1994, available at the following link: https://tinyurl.com/myb3r3ft (last visited 31 January 2026).

Moreover, the concept of horizontal subsidiarity belongs to European culture: It was articulated in Pius XI's 1931 encyclical Quadragesimo Anno according to which:

> ... just as the powers they are capable of exercising on their own initiative and by their own means must not be taken away from people and transferred to the community, so it would also be an injustice and would seriously disturb the social order to take from the lower groupings and give to a wider community of a higher rank, the functions which they are capable of fulfilling themselves. The natural purpose of any social intervention is to help the members of society and not to destroy or absorb them.[89]

This helps us to understand why in a civil economy '[t]he State shall not do that which reciprocity can do'.[90]

Going beyond the cultural roots of the third sector under the umbrella of the horizontal subsidiarity, there are two regulatory patterns within which the development of CC schemes may fall.

First, CC schemes may be developed for their 'transformative potential' since 'they imply a process of deconstruction and reconstruction of our framework of values, and they allow us to experiment with new practices'.[91] Therefore, they may be conducive to bringing about some policy priorities, such as the environmental sustainability development, or minority's trends when environmental topics fall outside the official schedule of the European Commission.

This is consistent with an evolutionary concept of monetary sovereignty and it is widely argued that, far from being a closed catalogue of positive powers, this concept develops throughout time.[92] Therefore, in the Eurozone, the mandate of the European Central Bank comprises not only of monetary stability but also financial stability. More recently, environmental sustainability has influenced, to some extent, European Central Bank monetary policy and, much more, the legal framework for the operation of banking business and the level and quality of bank capital ratios.

Second, EU lawmakers have addressed access to the payment system through transaction accounts as a service of general economic interest since the 2014 PAD

[89] M. Cahill, 'Theorizing subsidiarity: towards an ontology-sensitive approach' 15(1) *International Journal of Constitutional Law*, 201-224 (2017).

[90] S. Zamagni, n 83 above, 499.

[91] The so-called 'transformative monetary plurality': J. Blanc and M. Fare, 'Community-Based Alternative Currencies as Drivers of New Monetary Arrangements', in G. Vallet et al eds, *Central Bank, Monetary Policy, and the Future of Money* (Cheltenham: Edward Elgar Publishing, 2022), 245-271. In the context of this analysis, this may be considered a way to bringing the evolution of monetary sovereignty into line with the access-to-justice model, ie 'the theoretical chance of EU citizens to participate in the market so as to make it a realistic opportunity': H.W. Micklitz, *Social justice and access justice in private law* (Florence: EUI Working Papers, 2011), 2, available at https://tinyurl.com/559jpzaf (last visited 31 January 2026).

[92] K. Zimmermann, 'The Concept of Monetary Sovereignty Revisited' *European Journal of International Law*, III, 79 (2013).

directive conferred on all persons regularly residing in the Union the right to a payment account on a cross-border basis and a payment account with basic features, if they lack sufficient financial resources for other types of payment accounts.[93] Moreover, consistently with the regulatory approach to regulated industries and infrastructures, like energy, railways, or gas utilities, the EU lawmakers have set a tariff policy to ease the use of consumer debit and credit cards establishing a threshold for the multilateral interchange fee in Regulation no 751 of 2015.[94]

This analogy is particularly interesting in light of the application of the horizontal subsidiarity principle in the Renewable Energy Directive (RED II), which allows consumers who acquire ownership in RE (renewable energy) sources to become 'prosumers', ie individuals who generate a share of the energy they consume establishing a renewable energy community (REC). Specifically, REDII ensures that 'RECs can compete for support 'on an equal footing with other market participants' and calls on Member States to take into account the specificities of renewable energy communities when designing support scheme.[95]

The constructive analysis suggests that the European Union harmonisation process has already encouraged monetary plurality and this may comprise also the third sector and the CC schemes but there is at least a two-fold point of difficulty. Some cooperatives may have grown so much that the line between them and for-profit businesses has become blurred, especially whenever the distribution of profits is considered a proxy for the pursuit of public purpose.[96] Also, the governance structure should be consistent with the solidarity and reciprocity principle from the beginning to the end of CC experiences.

V. Conclusions

This paper aimed to ascertain how the CC accommodation process may challenge the EU legal framework and, particularly, the principle of monetary sovereignty which is one of the main features of its nation-States. Even if it might be wishful thinking, it is important to also examine whether the growth of CCs may increase the risk of (re-)establishing the internal frontiers that the harmonisation process has sought to remove.

[93] European Parliament and Council Directive 2014/92/EU of 23 July 2014 on the comparability of fees related to payment accounts [2014] OJ L257/214. Therefore, despite the fact that the payment industry has never undergone a liberalization process, unlike the energy, gas and railway industries, the European lawmakers have introduced regulation of multilateral interchange fees - fees set for network services within the payment system.

[94] European Parliament and Council Regulation 2015/751/EU of 29 April 2015 on interchange fees on card-based payment transactions [2015] OJ L/123 (thereafter, MIF Regulation).

[95] J. Lowitzsch et al, 'Renewable energy communities under the 2019 European clear energy Package – governance model for the energy cluster of the future?' *Renewable and Sustainable Energy Reviews*, 122 (2020).

[96] B. Enjolras et al, *The third sector as a renewable resource for Europe* (Basingstoke: Spring Nature, 2018), 26.

The analysis presented CCs as community currencies developed not to replace official currencies and payment systems, but to serve an ancillary function, pursuing local development, social, and economic development objectives based mainly (but not exclusively) on a principle of reciprocity. The legal analysis examined three categories of CCs, classified according to the type of connection established with mainstream banking and monetary systems. The study highlighted how CCs may pose challenges to the existing regulatory framework governing economic sectors including banking, the provision of payment services, and the issuance and trading of e-money tokens. Further, it explored the legal status of official currency in relation to private currencies. Finally, it looked at the potential implications for maintaining a level playing field within the internal market, particularly when CC schemes potentially conflict with Art 101 of the TFEU.

In the EU legal framework, three approaches to the concept of money coexist side by side, namely the State theory, the institutional theory and the societary theory of money. Therefore, while (euro) banknotes and coins are still the legal tender, they are sandwiched between the increasing role of scriptural money, thanks to the construction of the internal market for payments, and the on-going creation of money-like products, such as asset-referenced tokens and money market funds. Under the umbrella of the law (and not beyond it), there are different types of monies for various social groups and economic functions. Within this framework, legal scholars are very familiar with the application of the horizontal subsidiarity principle to profit-making business entities, such as credit institutions or other financial intermediaries. By contrast, they are less familiar with the exercise of the monetary sovereignty exercised through not-for-profit entities, such as CC schemes. As money is comparable to energy and other public utilities and infrastructure, European Union lawmakers have already applied horizontal subsidiarity, as RED II demonstrated.

However, this is just the beginning of the legal analysis. Indeed, there are several research issues to examine moving forward. These include what type of regulatory strategy to follow, which CC regulatory model to adopt, and how to achieve workable interoperability among CC schemes in which main policy stakeholders should be involved. In any case, applying both vertical and horizontal subsidiarity principles means that the normative scope of monetary sovereignty in the Eurozone is stretching to cover not only monetary and financial stability but also social stability.