

## SUMMARY

The purpose of this short paper is to present the institutional framework regulating the issuance and circulation of legal tender in the Eurozone and to explore the possibility for the introduction of a complementary means of payment. I do not profess to be a lawyer but in my view there are two areas of interest that must be covered; first, the Primary and Secondary Laws of the European Union, and second, the implementation of these Laws in Member States with special reference to the Statutes of National Central Banks and in this case the Statute of the Bank of Greece. I arrive at the conclusion that a non-cash, complementary digital payment instrument, that is not recorded into existence in the liability side of the balance sheet of a monetary authority or isn't a transferable deposit convertible on demand at par into units of currency, can circulate in parallel with the euro for the settlement of technically non-monetary transactions if these transactions are not denominated in euros. Such an instrument could be defined as a restricted legal tender. Although the introduction of a complementary means of payment doesn't seem to breach EU law the main obstacle is in the Statute of the Bank of Greece that needs to be amended before the introduction of any instrument.

## SECTION A: THE INSTITUTIONAL FRAMEWORK OF THE EURO

### 1. PRIMARY LAW: THE TREATIES

The Treaty of Maastricht was signed on 07.02.1992. Article 128 of the Treaty on European Union and the **Treaty on the Functioning of the European Union**<sup>1</sup> [hereinafter TFEU] stipulates:

*“Article 128*

*(ex Article 106 TEC)*

**1. The European Central Bank shall have the exclusive right to authorise the issue of euro banknotes within the Union. The European Central Bank and the national central banks may issue such notes. The banknotes issued by the European Central Bank and the national central banks shall be the only such notes to have the status of legal tender within the Union.**

**2. Member States may issue euro coins subject to approval by the European Central Bank of the volume of the issue. The Council, on a proposal from the Commission and after consulting the European Parliament and the European Central Bank, may adopt measures to harmonise the denominations and technical specifications of all coins intended for circulation to the extent necessary to permit their smooth circulation within the Union.”**

Article 16<sup>2</sup> of the Statute of the European Central Bank reiterates:

*“Banknotes*

*In accordance with Article 128(1) of the Treaty on the Functioning of the European Union, the **Governing Council shall have the exclusive right to authorise the issue of euro banknotes within the Union. The ECB and the national central banks may issue such notes. The banknotes issued by the ECB and the national central banks shall be the only such notes to have the status of legal tender within the Union.**”*

It must not go unnoticed that in the context of both articles neither the word money nor the word currency is mentioned. The terms used instead are “euro banknotes”, “notes”, “legal tender”, and “euro coins”. I shall revert

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<sup>1</sup> Official Journal C 326 , 26/10/2012 P. 0001 – 0390, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT>

<sup>2</sup> Ibid 1

later to the notion of legal tender. However Section F of the Regulation 549/2013<sup>3</sup> on the European system of national and regional accounts in the European Union define:

**“Currency (F.21)**

5.76 Definition: **currency is notes and coins that are issued or authorised by monetary authorities.**

5.77 Currency includes:

(a) notes and coins issued by resident monetary authorities as national currency in circulation held by residents and non-residents; and

(b) notes and coins issued by non-resident monetary authorities as foreign currencies in circulation and held by residents.

...

Box 5.2 — Currency issued by the Eurosystem

**B5.2.1. Euro banknotes and coins issued by the Eurosystem are the domestic currency of the Member States**

...

**B5.2.2. Currency issued by the Eurosystem includes notes and coins. ...**

Deposits (F.22 and F.29)

5.79 Definition: **deposits are standardised, non-negotiable contracts with the public at large, ... Deposits usually involve the debtor giving back the full principal amount to the investor.**

Transferable deposits (F.22)

5.80 Definition: **transferable deposits are deposits exchangeable for currency on demand, at par, and which are directly usable for making payments by cheque, draft, giro order, direct debit/credit, or other direct payment facilities, without penalty or restriction.”**

What is observable here is the complete absence of any reference to the term legal tender. From the combination of the TFEU with regulation 549/2013 we arrive at the conclusion, that **euro banknotes and coins** issued by the Eurosystem are the domestic currency of the Member States and **shall be the only currency to have the status of legal tender within the Union** and that the Governing Council of the ECB shall have the exclusive right to authorise the issue of euro banknotes within the Union. The adoption of such a definition is strengthened by Article 2 of the recent 2014/62<sup>4</sup> directive on the protection of the euro and other currencies against counterfeiting by criminal law

*“currency’ means notes and coins, the circulation of which is legally authorised, including euro notes and coins, the circulation of which is legally authorised pursuant to Regulation (EC) No 974/98”*

## **2. SECONDARY LAW: REGULATION 974/98**

Before elaborating on the notion of legal tender we must turn our attention to Regulation 974/98<sup>5</sup> whose purpose is to regulate the introduction of the euro.

<sup>3</sup> Official Journal L 174, 26.6.2013, p. 1–727, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013R0549>

<sup>4</sup> Official Journal L 151, 21.5.2014, p. 1–8, <http://eur-lex.europa.eu/legal-content/En/TXT/?uri=CELEX:32014L0062>

<sup>5</sup> Official Journal L 139, 11/05/1998 P. 0001 – 0005, <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1427192385533&uri=CELEX:31998R0974>

In the preamble of the Regulation the Contracting Parties state

(8) ... a transitional period is needed between the **substitution of the euro for the currencies of the participating Member States and the introduction of euro banknotes and coins**; ... a legal equivalence is established between the euro unit and the national currency units;

(9) ... **the euro will replace the ECU as from 1 January 1999 as the unit of account of the institutions of the European Communities**; ... the euro should also be the unit of account of the European Central Bank (ECB) and of the central banks of the participating Member States; ...

(19) ... whereas limitations on payments in notes and coins, established by Member States for public reasons, are not incompatible with the status of legal tender of euro banknotes and coins, **provided that other lawful means for the settlement of monetary debts are available**;

I underlined the words substitution and replace as they are important when later on I turn my attention to the Statute of the Bank of Greece and the adoption of Regulation 974/98 by Greece. Paragraph 19 of the preamble however clearly indicates that incompatibility limitations for the settlement of monetary debts must be eliminated in order for the euro to attain the status of legal tender. Further on with Regulation 974/98:

“Article 1

For the purpose of this Regulation:

-‘legal instruments’ shall mean legislative and statutory provisions, acts of administration, judicial decisions, contracts, unilateral legal acts, **payment instruments other than banknotes and coins, and other instruments with legal effect**,

“Article 2

As from 1 January 1999 the currency of the participating Member States shall be the euro. The **currency unit shall be one euro**. One euro shall be divided into one hundred cent.

Article 3

The euro shall be substituted for the currency of each participating Member State at the conversion rate.

Article 4

The euro shall be the unit of account of the European Central Bank (ECB) and of the central banks of the participating Member States.

Article 5

**Articles 6, 7, 8 and 9 shall apply during the transitional period.**

Article 6

1. The euro shall also be divided into the national currency units according to the conversion rates. Any subdivision thereof shall be maintained. Subject to the provisions of this Regulation the monetary law of the participating Member States shall continue to apply.

2. **Where in a legal instrument reference is made to a national currency unit, this reference shall be as valid as if reference were made to the euro unit according to the conversion rates.**

## Article 7

***The substitution of the euro for the currency of each participating Member State shall not in itself have the effect of altering the denomination of legal instruments in existence on the date of substitution.***

What is to be derived from articles 1 to 7 in conjunction with paragraph 19 of the preamble is that payment instruments other than banknotes and coins, and other instruments with legal effect and lawful for the settlement of debts in existence on the date of the substitution, whether denominated or not into the national currency unit before the transitional period, shall not be altered by the introduction of the euro. Obviously for such prudential clauses to exist in probably the most important regulation of the European Union it must have served a purpose. I cannot research into the national legislation of every Member State but it would seem reasonable to assume that complementary means of payment that were or were not denominated in the national currency irrespective of the convertibility to the national currency would have been forced out of circulation had such clauses not existed; at least that is my conclusion. Certainly the opinion of a legal expert is more important than my interpretation of the Regulation.

One obvious example would be the case of the complementary currency WIR in Switzerland. "WIR is not legal tender, but an entirely voluntary instrument" (Studer 1998) that was created in 1934 "as a response to the liquidity crisis then asphyxiating the Swiss economy." (Kalinowski 2011) CHW is an official ISO 4217:2008<sup>6</sup> private currency issued by the WIR Bank. "The WIR money issued by the WIR Bank is under the regulation of the Swiss National Bank and subject to their requirements" (Omercovic 2014) and it is issued at par with the Swiss Franc. Should Switzerland apply for entry into the Eurozone and be accepted, what would have happened to the WIR? Regulation 974/98 is safeguarding that the WIR will continue to function as a legal payment instrument for the settlement of monetary debts in private transactions.

The question then that arises from the existence of such clauses in 974/98, is whether after the adoption of the euro in a country already in the Eurozone, a different legal payment instrument not denominated in euros and whether convertible or not can be introduced to circulate in parallel with the euro for the settlement of monetary debts, and if yes for what debts and by whom. I hope that the answer becomes evident as we move on.

Regulation 974/98 stipulates in accordance with the TFEU under Part IV on euro banknotes and coins the following

### *Article 10*

*As from 1 January 2002, the ECB and the central banks of the participating Member States shall put into circulation banknotes denominated in euro. Without prejudice to Article 15, **these banknotes denominated in euro shall be the only banknotes which have the status of legal tender in all these Member States.***

### *Article 11*

*As from 1 January 2002, the participating Member States shall issue coins denominated in euro or in cent and complying with the denominations and technical specifications which the Council may lay down in accordance with the second sentence of Article 105a(2) of the Treaty. Without prejudice to Article 15, **these coins shall be the only coins which have the status of legal tender in all these Member States.** Except for the issuing authority and for those persons specifically designated by the national legislation of the issuing Member State, **no party shall be obliged to accept more than 50 coins in any single payment.***

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<sup>6</sup> Currently the WIR Bank has two ISO 4217:2008 registered currencies. The WIR Franc with alphabetic code CHW and numeric 945 and the WIR Euro with alphabetic code CHE and numeric 947! Info on the ISO 4217 standards is available at [http://www.iso.org/iso/currency\\_codes](http://www.iso.org/iso/currency_codes) and currency codes can be downloaded from <http://www.currency-iso.org/en/home/tables/table-a1.html>

## Article 15

1. Banknotes and coins denominated in a national currency unit as referred to in Article 6(1) shall remain legal tender within their territorial limits until six months after the end of the transitional period at the latest; this period may be shortened by national law.

2. Each participating Member State may, for a period of up to six months after the end of the transitional period, lay down rules for the use of the banknotes and coins denominated in its national currency unit as referred to in Article 6(1) and take any measures necessary to facilitate their withdrawal.”

The clear reference only to article 6(1) in article 15 in conjunction with articles 10 and 11, and by the way these articles are not transitional, are pointing to the direction that **a legal payment instrument that is not a banknote or coin with a different denomination that will not by law acquire the status of legal tender may circulate for the settlement of monetary debts freely in parallel with the euro.** In my view that would not constitute a breach of the TFEU and of the regulations regarding the euro as the sole currency (banknote and coin) that has the status of legal tender in the Eurozone. In addition to that, even the status of the euro coins as legal tender is restricted as anyone can refuse to accept more than 50 coins in any single payment putting effectively a barrier to all private transactions settled with coins to 100 euros, since the highest euro denominated coin is 2 euros. The next question that arises here is to define the concept of legal tender.

### 3. THE QUESTION OF LEGAL TENDER

A group of experts was set up by the Commission in 2009 to address the issue of a common definition of legal tender across the Eurozone. The Euro Legal Tender Expert Group [ELTEG] submitted a report in 2010; *“Definition, scope and effects of legal tender of euro banknotes and coins.”*<sup>7</sup> Based on this report the Commission issued the Recommendation 2010/191<sup>8,9</sup> *“on the scope and effects of legal tender of euro banknotes and coins.”* In the preamble of the Recommendation the Commission admits astonishingly:

*“There is currently some uncertainty at euro area level with regards to the scope of legal tender and the consequences thereof.”*

Where does this uncertainty arise from? The ELTEG Report is revealing:

*“The concept of **legal tender encounters that of contractual freedom** and the issue is to ascertain which of the two prevails in any given circumstance. In all Member States, the status of legal tender granted to euro banknotes and coins (hereafter referred to as “cash” in this paper) means that cash is a valid means of payment to settle a monetary debt unless the parties have agreed on other means of payment. However, the details and legal consequences involved vary considerably across countries.*

*For the purposes of **acquiring legal tender**, a large majority of the members agreed that notes and coins were issued when they had **entered into the liability side of the balance sheet of an issuing authority** (the ECB, an NCB or national treasury), and had been put into circulation by/in the name of the issuer.*

*... Nevertheless, it was agreed on the Union level that although **bank transfers** were a perfectly valid means of payment to settle a monetary debt (i.e. have ‘pouvoir libératoire’), their acceptance has not been made universally mandatory so that they **cannot benefit from legal tender status.** [!!!!!!]*

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<sup>7</sup> Report. Euro legal tender expert group (ELTEG). Definition, scope and effects of legal tender of euro banknotes and coins. [http://ec.europa.eu/economy\\_finance/articles/euro/documents/elteg\\_en.pdf](http://ec.europa.eu/economy_finance/articles/euro/documents/elteg_en.pdf)

<sup>8</sup> Official Journal L 83, 30.3.2010, p. 70–71, <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1427739561005&uri=CELEX:32010H0191>

<sup>9</sup> According to Article 288 of the TFEU, “Recommendations and opinions shall have no binding force”

...

*It was not possible to reach an agreement on the issue because of the two different schools of thought described above: according to one school, contractual freedom can limit the public law provisions of legal tender, whereas according to the other one, contractual freedom cannot prevail over the public law principle of legal tender.”<sup>10</sup>*

The accounting entry into the liability side of the balance sheet of the issuing authority is what gives to the euro the status of the sole currency in the form of banknote and coin as the legal tender according to Art. 128 (1) of the TFEU. That is in agreement also with the Regulation 549/2013 that regards deposits as “standardised, non-negotiable contracts” that can become legal tender only when they are exchanged for cash since deposits cannot benefit from the status of legal tender. It is certainly astonishing to discover that probably more than 90% of the money supply does not enjoy the status of legal tender since deposits are created into the liability side of the balance sheet of commercial banks when they give loans. In a sense, bank credit creation is simply private money benefiting from the fact that credit is convertible into cash. When a bank creates credit in the form of a loan it enters into a contractual agreement with the borrower, but how does this differ from the following excerpt to be found on the site of the European Union?

*“... contractual parties are free to agree to use in transactions other official foreign currencies with legal tender status in the state of issuance, e.g. the Pound Sterling or the US Dollar. The same applies to privately issued money like local exchange trading systems (e.g. voucher-based payment systems in certain communities) or virtual currency schemes (e.g. Bitcoin). Although these are not official currencies and have no legal tender status, parties can agree to use them as private money and without prejudice to the official currency (euro or national currency) being the sole legal tender. In that way, these forms of private money can be considered as economic assets. Private money transactions and business related to them are subject to the general rules of commodity trade such as taxation law, business law, anti-money laundering law or others. However, they are not official currencies and they are not governed by monetary law.”<sup>11</sup>*

However ELTEG does reach a common definition of legal tender that has been adopted as Article 1 in the Recommendation:

“Where a payment obligation exists, the legal tender of euro banknotes and coins should imply:

*(a) Mandatory acceptance:*

*The creditor of a payment obligation cannot refuse euro banknotes and coins unless the parties have agreed on other means of payment.*

*(b) Acceptance at full face value:*

*The monetary value of euro banknotes and coins is equal to the amount indicated on the banknotes and coins.*

*(c) Power to discharge from payment obligations:*

*A debtor can discharge himself from a payment obligation by tendering euro banknotes and coins to the creditor.”*

Hence it is only cash that is currency in the form of euro banknotes and coins that acquires the status of legal tender and obtains the power to discharge monetary obligations at face value unless the parties have agreed other means

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<sup>10</sup> pp. 4-6 Report. Euro legal tender expert group (ELTEG). Definition, scope and effects of legal tender of euro banknotes and coins, [http://ec.europa.eu/economy\\_finance/articles/euro/documents/elteg\\_en.pdf](http://ec.europa.eu/economy_finance/articles/euro/documents/elteg_en.pdf)

<sup>11</sup> [http://ec.europa.eu/economy\\_finance/euro/cash/legal\\_tender/index\\_en.htm](http://ec.europa.eu/economy_finance/euro/cash/legal_tender/index_en.htm)

of payment. Governments however do accept for the discharge of monetary debts, for example taxes, deposits that are transferable, that are convertible into cash-units of currency- on demand at par, but before the conversion of the deposit into cash, the deposit is not legal tender, if one accepts the report of the ELTEG and the subsequent recommendation of the Council. Governments technically in the Eurozone do accept already for the discharge of taxes and other monetary debts non-legal tender payment instruments! That might be an argument on the outskirts of the institutional framework, but it seems to be valid. In addition the settlement of monetary debts with transferable deposits could be classified as a non-monetary transaction according to Regulation 549/2013 on the European system of national and regional accounts in the European Union since bank deposits are liabilities denominated in units of currency.

*“Monetary versus non-monetary transactions*

*1.70 Transactions are monetary transactions when the units involved make or receive payments, or incur liabilities or receive assets denominated in units of currency.*

***Transactions that do not involve the exchange of cash, or assets or liabilities denominated in units of currency, are non-monetary transactions”.***

It is interesting to note that following the Recommendation, the European Payments Council [EPC] heavily criticized that the Recommendation *“forcefully asserts the position of physical cash (banknotes and coins) as legal tender.”* (Bielefeld 2011) The EPC supports a legal tender model *“spanning both cash and electronic payments.”* Also the ECB states in a report published recently on Virtual Currency Schemes that ***“Scriptural money, or bank money, in euro and electronic money (e-money) in euro are not legal tender. Nevertheless, these forms of money are widely accepted for all kinds of payments by choice. The euro as a currency may therefore take the form of banknotes, coins, scriptural money and electronic money.”*** (ECB 2015) The argument is further refined that ***“Virtual currency is also not money or currency from a legal perspective. ... it is defined as a digital representation of value, not issued by a central bank, credit institution or e-money institution, which in some circumstances can be used as an alternative to money.”*** (ECB 2015)

*«No virtual currency has so far been declared the official currency of a state, nor do any physical formats, backed by law, have a legal tender capacity. Therefore, no creditor is obliged to accept payment with it to discharge a debtor of its debt. This means that virtual currencies can be used only as contractual money, when there is an agreement between buyer and seller in order to accept a given virtual currency as a means of payment. In the EU, virtual currency is not currently regulated and cannot be regarded as being subject to the (current) PSD<sup>12</sup> [Payment Systems Directive] or the EMD<sup>13</sup> [E Money Directive]. As the phenomenon is still relatively new and also moving into different areas, it would be too early to try making new, tailor-made legislation. This would also give more importance to the phenomenon than currently warranted by its low usage. For the execution of its tasks in the field of payment systems, the ECB does not see the need to amend or expand the current EU legal framework. It is, however, desirable that legal clarity is established by the relevant authorities, explaining how the current legal framework applies to virtual currency and related aspects. »* (ECB 2015)

The emerging argument here is that, **a non-cash, non-legal tender, digital payment instrument, that is not recorded into existence in the liability side of the balance sheet of a monetary authority or isn't a transferable deposit convertible on demand at par into units of currency, can circulate on a voluntary basis in parallel with the euro for the settlement of technically non-monetary transactions if these transactions are not denominated in euros.** The only restriction for any Member State stems from the primary law of the TFEU that attributes to euro banknotes the

<sup>12</sup> Official Journal L 319, 5.12.2007, p. 1–36, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32007L0064>

<sup>13</sup> Official Journal L 267, 10.10.2009, p. 7–17, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32009L0110>

status of the sole legal tender within the Union. The notion of legal tender seems to rest on the mandatory acceptance of payment in cash, but even for Member States when they enter into a transaction with any citizen they are not enforced not to accept a complementary instrument of payment not issued by a monetary authority; the question of how to get the complementary means of payment accepted probably rests on the imposition or substitution or conversion of technically monetary to non-monetary debts, for instance municipal levies to be discharged with the digital complementary instrument. I will clarify this later on. With the exception of the Directive 2006/112/EC<sup>14</sup> on the common system of value added tax there is no fiscal harmonization across the European Union. Even the VAT Directive with the minor exceptions of Articles 366 and Article 367 does not enforce the discharge of VAT with euro-units of currency let alone banknotes and coins. Yet, the way that both primary and secondary law of the Union has been implemented differs across member states and the focus is on the Statutes of Central Banks.

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<sup>14</sup> Official Journal L 347, 11.12.2006, p. 1–118, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32006L0112>



## SECTION B: THE BANK OF GREECE

### 1. BRIEF HISTORY

The Bank of Greece commenced operations on May 14<sup>th</sup> 1928. Establishing a new Central Bank was a prerequisite for a 9 (nine) million pound sterling loan issued under the auspices of the League of Nations<sup>15</sup> as one third of the loan would be used for the “purpose of stabilizing the **Greek currency**”<sup>16</sup> in relation to gold. The Statute of the Bank of Greece was an annex to an International Treaty, the so called Geneva Protocol signed after lengthy negotiations by the representatives of the Greek coalition government on September 15<sup>th</sup>, 1927. A Presidential Decree was issued November 10<sup>th</sup> 1927<sup>17</sup> and the Geneva Protocol was ratified in Parliament by Law 3423/10.11.1927.<sup>18</sup> The terms of the Treaty required that the new Bank of Greece takes over the right of issue from the National Bank of Greece. The terms of the agreement between the Hellenic Government and the National Bank of Greece<sup>19</sup> as well as the Statute of the Bank of Greece were ratified by Law 3424/10.11.1927.<sup>20</sup>

It is beyond the scope of this short paper to present the fascinating history of the Bank of Greece in those first days. The Bank unchained a series of events among the “warring” political and economic elites of the country in the midst of scandals that led in the end to the collapse of the government in 1928. In short, the issuance of the loan involved complex bilateral negotiations between Greece and the first World War Allies for the settlement of inter-allied war debts. The 6% Stabilization and Refugee 40 year loan was floated successfully on January 31<sup>st</sup>, 1928 in New York and London and in Italy, Switzerland and Sweden<sup>21</sup>. The drachma was stabilized in relation to gold by a decree on May 12<sup>th</sup> 1928.<sup>22</sup> The Bank of Greece was to become a private-public institution with the state limiting its direct or indirect shareholding initially at 10%.<sup>23</sup> The Bank of Greece remains one of the few Central Banks that has not been nationalized after the Second World War (Roussow & Brytenbach 2011) and is listed in the Athens Stock Exchange ever since June 12<sup>th</sup> 1930.<sup>24</sup>

It must be noted that the Statute was drafted in English and French that were also the official languages of the Geneva Protocol. In the site of the Bank of Greece we find the following statement that has been verified by several subsequent judicial opinions<sup>25</sup>:

*“the Legislative Decree of 10 November 1927 explicitly states **that the provisions of the Statute have the force of law and, more specifically, the force of a superior law prevailing over any other provision of domestic law, given that the Statute of the Bank of Greece forms part of an international agreement ratified by law in accordance with Article 28 paragraph 1 of the Greek Constitution.**”*<sup>26</sup>

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<sup>15</sup> 6 Central Banks were established or remodeled in the 1920s with loans issued under the auspices of the League of Nations; Austrian National Bank, Bulgarian National Bank, Bank of Estonia, Hungarian National Bank, Bank of Greece and the Bank of Danzig. A seminal review of the loans issued under the League of Nations remains (Myers 1945), *The League Loans*.

<sup>16</sup> Article VI Paragraph 2 and 3 of the Geneva Protocol. Greek Government Gazette A 246/10.11.1927. Note that the Loan Agreement refers to the “Greek currency” and not to the drachma of Greece since 1833.

<sup>17</sup> Greek Government Gazette A 246/10.11.1927

<sup>18</sup> Greek Government Gazette A 298/07.12.1927

<sup>19</sup> The draft agreement between the Hellenic Republic and the National Bank of Greece was also an Annex to the Geneva Protocol.

<sup>20</sup> Greek Government Gazette A 298/07.12.1927

<sup>21</sup> The history of this loan can be traced at the Annual report of the Council of the Corporation of foreign bondholders available at <http://collections.stanford.edu/cfb/bin/browse/field/list?field=titleBrowse>.

<sup>22</sup> Greek Government Gazette A 79/12.05.1928

<sup>23</sup> Annex IV, Article 8, Greek Government Gazette A 246/10.11.1927

<sup>24</sup> <http://www.bankofgreece.gr/Pages/en/Bank/shareholders.aspx>

<sup>25</sup> For example Opinion 445/1994 of the Legal Council of the State, <http://www.nsk.gov.gr/webnsk/gnwmodothsh.jsp?gnid=26148>

<sup>26</sup> <http://www.bankofgreece.gr/Pages/en/Bank/LegalF/statute.aspx>

## 2. THE STATUTE OF THE BANK OF GREECE

So what does the Statute of the Bank of Greece say?

### **“Article 2**

*The main tasks of the Bank of Greece shall be to:*

...

*b) **conduct the policy on the exchange rate of the drachma [!!!] against other currencies, within the framework of exchange rate policy chosen by the government, following consultation with the Bank of Greece***

...

*f) **have the exclusive privilege of issuing banknotes which have the status of legal tender within Greece***

...

*As from the **adoption of the euro as the currency of Greece, the Bank shall no longer autonomously perform the tasks under a,b,c ... but ... shall contribute to the performance of the tasks of the ESCB. ... As from the same date, the Bank of Greece may issue banknotes which have the status of legal tender** in accordance with the provisions of Article 106 of the Treaty establishing the European Community and Article 16 of the ESCB Statute*

### **Article 3**

*The Greek State undertakes the obligation, during the period of the privilege granted to the Bank, **not to issue or re-issue money of any type other than coins in circulation**, in denominations not higher than one thousand drachmae [!!!] and such coins only through the Bank at its request or pursuant to the law.*

### **Article 7**

*The present Statute may be amended by a decision of the General Meeting of Shareholders, ratified by law.*

### **Article 8**

...

*The State, as well as public enterprises, shall not, directly or indirectly, hold shares of the Bank amounting, in the aggregate of such holdings, to more than thirty five per cent (35%) of the nominal issued share capital*

### **Article 13**

*No shareholder other than the State and the persons falling within the scope of **Article 2 of Law 2292/1953** may exercise the right to vote in the General Meeting in respect to a number of shares exceeding the percentage that corresponds to two percent (2%) of the Bank's share capital.*

### **Article 66**

*The **banknotes denominated in drachmae [!!!] issued by the Bank of Greece shall be legal tender throughout the Greek State; that is to say that, subject to the provisions of Article 68, they shall be accepted at their face value by the State, by all legal entities or natural persons, in the discharge of debt.***

Several questions arise regarding the Statute of the Bank of Greece. What are we to understand from article 2 in conjunction with article 66 of a Statute that is an International Treaty of a superior law over any domestic law in Greece?

1. That the Bank of Greece, *as from the **adoption** of the euro as the currency of Greece, no longer autonomously conduct[s] the policy on the exchange rate of the drachma?*
2. Are we to understand that *banknotes denominated in drachmae shall be legal tender throughout the Greek State but as from the **adoption** of the euro as the currency of Greece, the Bank has exclusive privilege of issuing banknotes which have the status of legal tender within Greece and may issue banknotes which have the status of legal tender in accordance with the provisions of Article 106 of the Treaty establishing the European Community and Article 16 of the ESCB Statute?*

In the ELTEG Report<sup>27</sup> it is stated that *“It is self-understood, from Article 2 in conjunction with Article 66 of the Statute of the Bank of Greece that Article 66 now refers to the euro banknotes.”* Since it is self-understood I will refrain from attempting to interpret what might not be self-understood as that would require a detailed review of the laws on the introduction, adoption or substitution of the euro as the [national or not] currency of Greece.

Accepting that euro banknotes are legal tender in Greece the attention turns to article 3 of the Statute. There is no other Central Bank Statute that contains such a clause where a State is obliged *“not to issue or re-issue money of any type other than coins in circulation.”* This clause has not been amended since the signing of the Geneva Protocol in 1927. What do other Central Bank Statutes in the Eurosystem state with reference to the notion of legal tender and the rights of the State?

### 3. SELECTED STATUTES OF OTHER CENTRAL BANKS IN THE EUROZONE.

In the Statute of the **Bank of Italy** no mention is made to the euro or to legal tender and according to Article 36 the Bank may *“issue bearer instruments.”* Nowhere in the Statute is made any reference that the Bank of Italy has the sole right to issue bank notes or that the euro is the sole legal tender.

Article 18 of the Statute of the **National Bank of Belgium** states: *“... the Bank shall issue banknotes in euros intended to circulate as means of payment constituting legal tender in the territory of the States participating in Stage Three of Monetary Union.”* Nowhere in the Statute is made any reference that the Bank of Belgium has the sole right to issue bank notes or that the euro is the sole legal tender.

Article L.141-5 of the Statute of the **Bank of France** states: *“...the Banque de France shall have the sole right to issue banknotes accepted as legal tender in metropolitan France and in the overseas departments.”* No reference is made to the euro.

Article 15.1 of the **Bank of Spain** states: *“The Banco de España shall, with the prior authorisation of the European Central Bank, have the power to issue euro banknotes which, without prejudice to the legal system applicable to coins, shall be the only valid banknotes within Spanish territory.”* Article 7.3e states that one of the functions of the Bank is *“To issue legal-tender banknotes.”*

Article 4.2 of the **Austrian National Bank** states: *“The Oesterreichische Nationalbank shall have the exclusive right in Austria to produce banknotes or to have banknotes produced that have the status of legal tender in Austria; the legal position of the ECB shall not be affected thereby. Furthermore, the Oesterreichische Nationalbank shall be empowered to produce securities, **other stores of value** and administrative forms that must meet special security requirements”* Article 61.1 states: *“... the Oesterreichische Nationalbank shall be empowered to issue banknotes denominated in euro. The banknotes denominated in euro which are issued by the Oesterreichische Nationalbank,*

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<sup>27</sup> page 27, Ibid 7

*the ECB and the national central banks of the other Member States participating in the third stage of EMU shall have the status of legal tender". Also Article 61.2: "The banknotes referred to in paragraph 1 must be accepted at their full nominal value **without restriction**, unless a liability is to be met by an otherwise specified means of payment."*

Article 14.1 of the Deutsche Bundesbank states: *"...the Deutsche Bundesbank shall have the sole right to issue banknotes in the area in which this Act is law. Banknotes denominated in euro shall be the **sole unrestricted legal tender**."* However Article 35.1.1 on the *Unauthorised uttering and use of monetary tokens* sets *A term of imprisonment not exceeding five years or a fine will be imposed on anyone who utters without authority monetary tokens (stamps, coins, notes or **other instruments capable of being used for payment purposes instead of the coins or banknotes authorised by law**) or non-interest-bearing bearer debt securities, even if they are not denominated in euro."*

The research to identify a clause similar to that of Article 3 of the Bank of Greece is futile. Greece has not simply conferred to the Bank of Greece the right to issue the currency of Greece as the sole legal tender, but voluntarily and by an International Treaty ever since 1927 resigned from the sovereign monetary prerogative. In some cases Statutes of National Central Banks fail even to make reference to the euro banknotes as being the sole legal tender, let alone that there is no Member State of the Eurozone that legal tender is actually defined according to the ELTEG report. It is also interesting that it is only in the Statute of the Bank of Greece that we should understand that whenever a reference is made to the drachma it actually refers to the euro; and the word drachma didn't even exist in the Statute up until 1997. Whether Member States adopt the euro in the national laws and no explicit reference is made in the Statute of their Central Banks or whether they grant the right to issue euro banknotes to their Central Banks, as those are integral to the functioning of the Eurosystem, no State has forbidden itself in the Statutes to *"issue or re-issue money of any type other than coins."*

Even weirder is the fact, that under article 7, the Annual General Meeting (AGM) of the shareholders of a company listed in the Athens Stock Exchange does not simply propose an amendment to the Statute to be ratified by Parliament, which is not an usual procedure, but the AGM actually amends an International Treaty effectively extending the charter of the Bank into eternity.

#### **4. COMPLEMENTARY CURRENCY FOR GREECE**

**So the question is whether the Greek State can issue a complementary means of payment to circulate in parallel with the euro. The answer is a clear cut No according to the Statute. It is forbidden. What can be done? There are two options:**

1. Let another private company issue a non-cash, complementary digital payment instrument as defined in the first section of this short paper. That is not forbidden and it doesn't require any legislation.
2. Amend the Charter of the Bank of Greece

I will elaborate only on the second option. To amend the Statute of the Bank of Greece an extraordinary Annual General Meeting of the shareholders must be called. According to Article 8 of the Statute The State, as well as public enterprises, shall not, directly or indirectly, hold shares of the Bank amounting, in the aggregate of such holdings, to more than thirty five per cent (35%) of the nominal issued share capital. According to Article 2 of Law 2292/1953<sup>28</sup> the Minister of Finance or Labour represents all public sector entities and social security funds in the Annual General Meetings of banks. According to Article 12b of the Statute, *"Extraordinary General Meetings shall be held whenever required"* and *"Proposals to amend this Statute, with the exception of the capital increase provided by Article 9, may also be discussed at the Extraordinary General Meetings, to be held for this purpose. Decisions taken on such issues*

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<sup>28</sup> Greek Government Gazette A 31/18.02.1953

*shall be submitted to the Parliament, through the Government, for ratification.*” In addition an announcement<sup>29</sup> made by the Bank of Greece on May 12<sup>th</sup> 2012 states that the Public Sector and other shareholders of the General Government control 95% of the Annual General Meeting of the Bank of Greece. It is crucial to amend the Statute as the introduction of a complementary means of payment does not simply breach an International Treaty but the European Central Bank, let alone other private shareholders, could intervene to declare it illegal.

In what direction should the Statute be amended?

“Article 3

The Greek State undertakes the obligation, during the period of the privilege granted to the Bank, not to issue ~~or re-issue money of any type other than~~ coins in circulation, in denominations ~~not~~ higher than one thousand drachmae and such coins only through the Bank at its request or pursuant to the law.”

“Article 2

The main tasks of the Bank of Greece shall be to:

f) have the exclusive privilege of issuing banknotes which have the status of **[insert the words: sole unrestricted]** legal tender within Greece”

The amendments require the approval of the ECB but they cannot be turned down as they do not violate any article of the TFEU or of the Statute of the ECB. In addition the amendment of Article 2f adopts the phrasing of a Statute already approved by the ECB and namely that of article 14.1 of the Bundesbank. The Bundesbank explains in her site that *“Euro coins are **restricted legal tender** as no one is obliged to accept more than 50 coins or coins to the value of more than €200.”*<sup>30</sup> In conjunction with article 35 of the Bundesbank Statute, it would still be illegal to issue *“instruments capable of being used for payment purposes.”* However the German Federal Government recognized that Bitcoin is a “unit of account” used in multilateral trading systems<sup>31</sup> and the German Federal Financial Supervisory Authority (BaFin) stated that Bitcoin is *“based on the idea of a stateless substitute currency [Ersatzwahrung]”* that qualifies as a *“financial instrument”* under German law but is neither *“e-money”* nor *“legal tender and therefore not currency.”*<sup>32</sup> There seems to be also an ongoing parliamentary discussion in Germany on whether Bitcoin transactions are tax-free.<sup>33</sup>

The terminology adopted in the Statute of the Bundesbank that the euro is the “sole unrestricted legal tender” leaves room for interpretation on the notion of a “restricted legal tender” that cannot be confined simply to the euro coins according to article 11 of Regulation 974/98. Whether Greece or any other Member State needs to adopt into national legislation the notion of a restricted legal tender in order to allow legally a complementary means of payment to circulate in parallel with the euro is a question to be evaluated by experts. The Statute of the Bank must be certainly amended and it is not only articles 2f and 3 that must be amended but that is again beyond the scope of this short paper. The truth is that after the suggested amendments to the Statute of the Bank of Greece, there would be no obstacles, other than the political ones of course, that would not allow Greece to introduce a “restricted legal tender” into circulation.

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<sup>29</sup> Bank of Greece Announcement, 12.05.2012,

[http://www.bankofgreece.gr/Pages/el/Bank/News/Announcements/Displtem.aspx?Item\\_ID=3966&List\\_ID=1af869f3-57fb-4de6-b9ae-bdfd83c66c95&Filter\\_by=AN](http://www.bankofgreece.gr/Pages/el/Bank/News/Announcements/Displtem.aspx?Item_ID=3966&List_ID=1af869f3-57fb-4de6-b9ae-bdfd83c66c95&Filter_by=AN)

<sup>30</sup> [http://www.bundesbank.de/Redaktion/EN/Glossareintraege/L/legal\\_tender.html](http://www.bundesbank.de/Redaktion/EN/Glossareintraege/L/legal_tender.html)

<sup>31</sup> <http://www.faz.net/aktuell/finanzen/devisen-rohstoffe/digitale-waehrung-deutschland-erkennt-bitcoins-als-privates-geld-an-12535059.html>

<sup>32</sup> [http://www.bafin.de/SharedDocs/Veroeffentlichungen/DE/Fachartikel/2014/fa\\_bj\\_1401\\_bitcoins.html](http://www.bafin.de/SharedDocs/Veroeffentlichungen/DE/Fachartikel/2014/fa_bj_1401_bitcoins.html)

<sup>33</sup> [http://www.frank-schaeffler.de/wp-content/uploads/2013/08/2013\\_08\\_07-Antwort-Koschyk-Bitcoins-Umsatzsteuer.pdf](http://www.frank-schaeffler.de/wp-content/uploads/2013/08/2013_08_07-Antwort-Koschyk-Bitcoins-Umsatzsteuer.pdf)

## CONCLUSION

The institutional framework of the Eurozone does not enforce any State not to accept non-cash payment instruments other than legal tender for the settlement of monetary debts. Indeed that is common practice almost everywhere in the Eurozone as transferable bank deposits are not legal tender even if the TFEU specifically states that euro banknotes are the only legal tender in the Union. Greece has not simply conferred the right of issue to the Bank of Greece but has voluntarily and by an international treaty resigned from its sovereign monetary prerogative. If the Statute of the Bank of Greece is not amended the introduction of a complementary means of payment is not possible. It is up to the government and the Minister of Finance or Labour to call for an extraordinary Annual General Meeting of the shareholders of the Bank of Greece to amend articles 2f and 3 of the Statute. After the amendment the Greek government can introduce a financial instrument that would technically constitute a restricted legal tender for circulation only at a national level, internal in Greece.

A non-cash, complementary digital payment instrument, that is not recorded into existence in the liability side of the balance sheet of a monetary authority or isn't a transferable deposit convertible on demand at par into units of currency, can circulate in parallel with the euro for the settlement of technically non-monetary transactions if these transactions are not denominated in euros.

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