Euro and Euro-denominated Obligations

A private law perspective
Euro-scepticism turned into action: what then?

• No prognosis, that «something» will happen
• No evaluation of the institutional & socio-economic fitness of the Euro-zone
• No political agenda
• The strictly legal point of view
• A «what if» exercise
• Exploring the room for manoeuvre in view of the legal framework
Content

I. Lawful national measures <-> violations of EU law

II. Consequences of violations of EU law

III. The way forward
Disturbances within the Euro-zone

• Currency reform, parallel currencies, «mini-BoTs»
• Capital controls and restrictions
• Sovereign Default

→ different events, calling for separate legal assessments
I. Lawful national measures <-> violations of EU law
Monetary union – the legal framework

**Primary Law**

- TFEU Article 128: ECB-authorized notes “shall be the only such notes to have the status of legal tender within the Union.”
- Inclusion in Euro-zone comes by virtue of the membership in the EU, no two separate memberships, EU and Euro-Zone
- Member-states exempted from EURO-currency zone by virtue of agreed derogation *from Treaty*
- No isolated withdrawal from the Eurozone
- Withdrawal from the EU:
  TEU Art. 50: «Chronicle of a (currency) death foretold»
Secondary Union law

First Euro-Regulation (EC) No. 1103/97

Second Euro-Regulation (EC) No. 974/98

Third Euro-Regulation (EC) No. 2866/98

Three Coin Regulations
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.
A legal tender union → a uniform currency of account
Lawful (Eu-law compliant) domestic currency legislation

Unlawful tampering with the €

• Replacing the EURO with a national currency
Parallel currencies?

- Do both «moneys» have legal tender quality?

  Monetary obligations to be denominated & discharged either way
Parallel currencies

Lawful (Eu-law compliant) domestic currency legislation

Unlawful tampering with the €

• Replacing the EURO with a national currency

• Introducing a parallel currency with legal tender quality
  TFEU Article 128: “shall be the only such notes”
Sub- or quasi-monetary instruments

Vouchers
• To be redeemed by issuer only
• Transfer possible, but only issuer is under an obligation to accept

Local exchange trading system (LETS)
• Private issuers
• Barter-clubs, similar to the Swiss WIR-Money
• Closed system, no € in, no € out
Lawful (Eu-law compliant) domestic Euro-currency + non legal tender instruments

Unlawful tampering with the € Euro-currency + parallel currency with legal tender quality
Mini-BoT: What it is (... or could be)

• BOT – Buoni Ordinari del Tesoro = Short term Treasury Bill

• claim against the government

• Not-interest-bearing

• Securitized

• Physical Notes in small denominations, hence «mini»

• Transferable

• **Means of payment** *vis a vis* the State (taxes) and state controlled entities
Mini-BoTs: do they violate EU-law?

- Matter here only looked into: TFEU Art. 128 vs. public debt issue: securitisation and monetisation of outstanding tax credits
The legal issue: Defining «legal tender»

as used in TFEU Art. 128

• Term used, but not defined in Euro-Regulations

• Art. 11 Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the Euro:

“... 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.”
• Money ≠ Legal tender

• the means of payment (money) which the monetary creditor must accept by law

• Only physical money qualifies as legal tender

• Some norm (act of parliament or statutory instrument) is required, binding the judiciary
Relative legal tender?

Monetary theory: Money is what you must use to pay taxes etc.
Who decides?

ECJ
Future potential applications of Mini-BoTs

• Social security payments in Mini-BoT

• Salaries of state personnel paid in Mini-BoT

• Foreign creditors not affected
The crossing of the Rubicon

• Upgrading Mini-BoTs to a ‘true’ parallel currency or a Euro-substitute:

  1 Mini-BoT = 10 Euro

• Mini-BoTs become legal tender, if by law recognized as a payment for Euro-obligations

• Difficult logistics of a currency reform:

  With Mini-BoTs one is «at the ready»
II. Consequences of violations of EU law
Domestic Courts, state ‘X’

• Primacy of EU law: National currency law may not be applied
• Acte Claire: no preliminary ruling of the ECJ necessary

On top:
• Treaty violation proceedings
• State liability for damages
Courts in other member states

• same
Swiss Courts

• Art. 147 IPRG – Lex-monetae-Konzept
Courts in third countries, e.g. New York
Conclusion

• Unilateral ‘dirty’ departure from Euro-Zone ineffective

• Ways and means to lawfully relax member states’ integration in the Euro-Zone?
III. The way forward
• Complete exit from the Euro-Zone or **national** parallel currency
  → Change of treaties required
  new EU-Regulation insufficient

• An ECB-controlled parallel currency (‘Eurolino’)  
  → satisfies the ‘Economic and Monetary Union’-requirement 
  an Euro IV-Regulation would be sufficient

• Leaving the Union: Art. 50 TEU
Parallel currencies as part of the Monetary Union
Currency Reform Acts - essentials

• Date of Reform
• Definition of the new nominals: ‘recurrent connect’
• Floating or pegged
• Sole currency or overlap with the Euro?
• Effect on existing Euro-obligations
Statutory currency conversion: which obligations singled out?

• Domestic place of payment
• Domestic residence/domicile of debtor

Less likely:
• Lex contractus
• Nationality of debtor
• Combinations of the above