

Legal Nature of a Digital Euro and the Role of Intermediaries

ILF Symposium

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16 January 2023

Overview

- I. Where do we Stand?
- II. On What **Legal Basis** do we Act?
- III. **Legal Nature** of a Digital Euro
 - 1) A Digital Euro as **Central Bank Book Money**
 - 2) A Digital Euro as a **Digital Banknote**
 - 3) Alternatives
- IV. **Transfer** of a Digital Euro
- V. What Will the Digital Euro be, Really?

I. Where do we Stand? (1)

- 14 July 2021: ECB Governing Council decision
investigation phase ✓



- **Objective:** prepare potential issuance of a digital euro



- **ECB second progress report** on the investigation phase of a digital euro, 21 December 2022

I. Where do we Stand? (2) Eurosystem Proposals

– Digital Euro: **liability item** of the Eurosystem

– **Distribution:** intermediaries



– **Settlement:** Eurosystem



II. On What Legal Basis do we Act?

– Issuance of **banknotes**? – Art. 128 TFEU, Art. 16 ESCB Statute



– Opening of **accounts**? – Art. 17 ESCB Statute



– Efficient and sound **payment systems**? – Art. 127 TFEU, Art. 22 ESCB Statute



– Measures necessary for the **use of the euro as the single currency**? – Art. 133 TFEU

→ **Union regulation** (Commission proposal: Q2/2023)

III. Legal Nature of a Digital Euro

Prologue: Civil law Categories of Money Today

Cash



- Tangible **object**
- **Property law**
- Transfer **without intermediaries**
- **No interest**

Book money

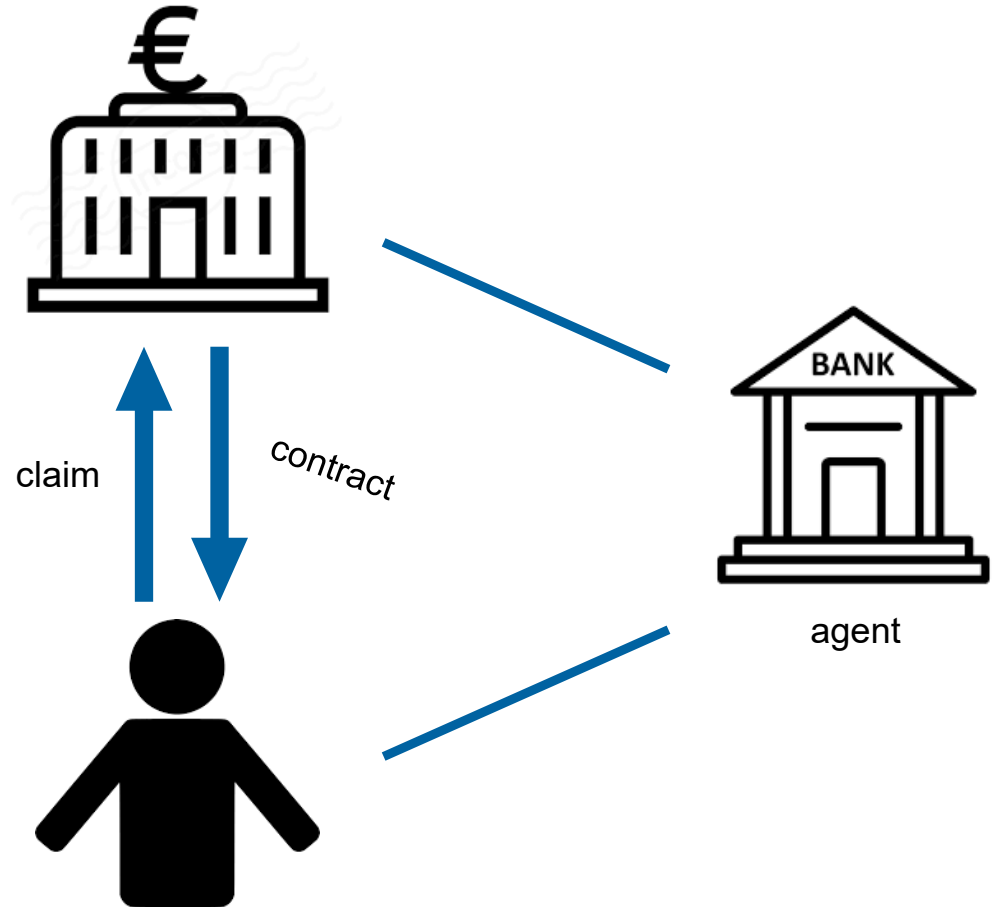


- **Claim**
- **Law of obligations**
- Transfer **via intermediaries**
- **Interest possible**

1) A Digital Euro as **Central Bank Book Money**

One legal relationship:

- Users need to open an account with the central bank
- Contract: central bank ↔ user
- Intermediaries: agents?



1) A Digital Euro as **Central Bank Book Money**

– Issue 1:

- **Article 17 ESCB Statute** – Eurosystem central banks may not open accounts for everyone
- **Two-tiered banking system** – cf. Articles 17, 18, 19, 21, 22, 23 ESCB Statute

– Issue 2:

Outsourcing? – Article 9.2 ESCB Statute

– Issue 3:

Central banks as account-carrying entities remain obliged regarding **AML/CFT duties**

Article 17

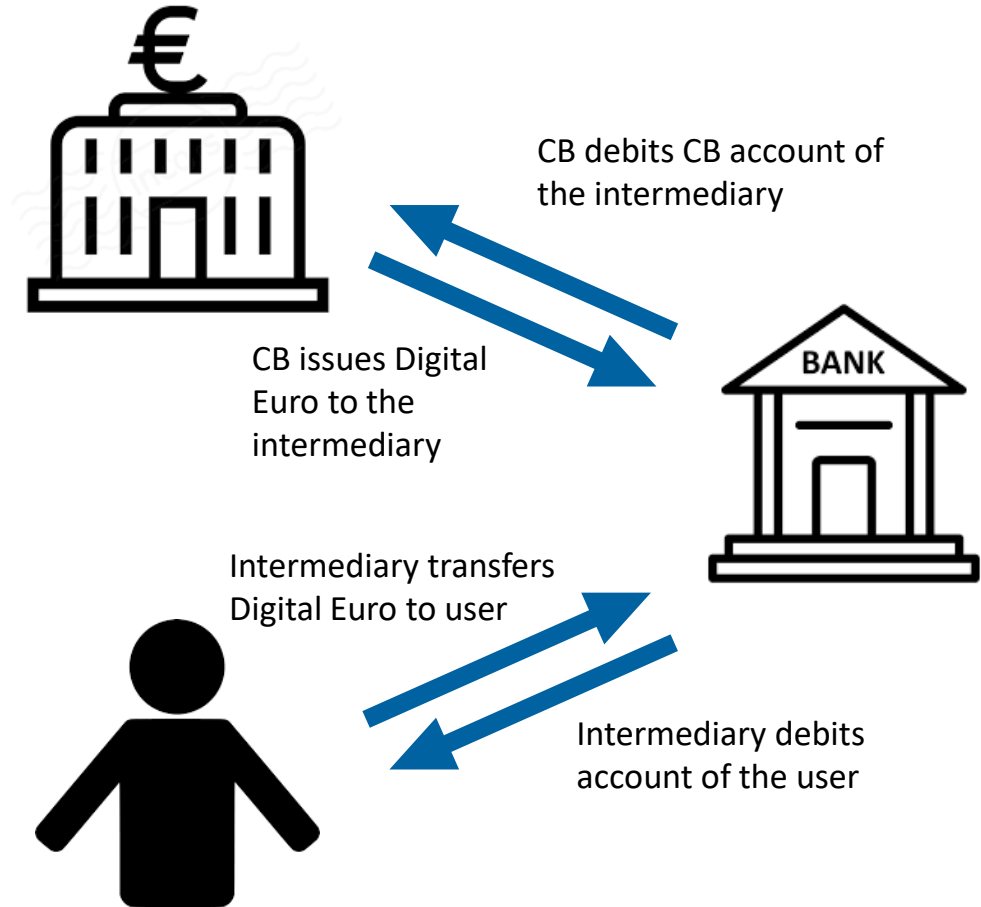
Accounts with the ECB and the national central banks

In order to conduct their operations, **the ECB and the national central banks may open accounts for credit institutions, public entities and other market participants** and accept assets, including book entry securities, as collateral.

2) A Digital Euro as a Digital Banknote

Two separate legal relationships:

- Central bank \leftrightarrow intermediary
 - Intermediary \leftrightarrow user
-
- Issuance of the Digital Euro along the chain of account relationships
 - in return for a debit of the account
 - just as with banknotes



2) A Digital Euro as a Digital Banknote

– Issue:

- No existing legal infrastructure for the transfer of digital assets
- Property law might not be applicable, courts might use analogies
- Necessary to create a legal infrastructure *de lege ferenda*
- Concepts from the digital world need to be “translated” → traditional legal concepts

– Challenges:

- Political pressure → narrow timeframe
- Risk: bad legislation

3) Alternatives – Overview (1)

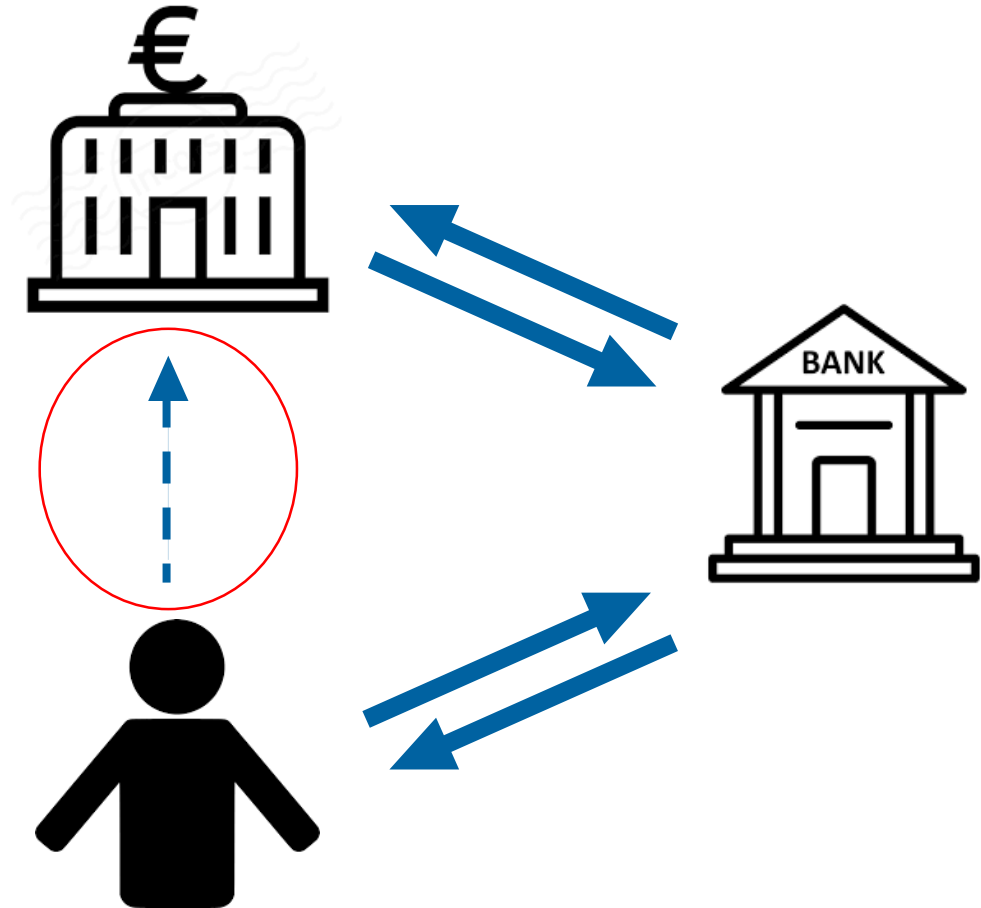
As with “digital banknotes“:

Two separate legal relationships:

- Central bank \leftrightarrow intermediary
- Intermediary \leftrightarrow user

Plus:

Right/entitlement of the user vis-à-vis the central bank



3) Alternatives – Overview (2)

– Possibilities:

- Analogy to custody of securities?
- “Central bank e-money”?
- “Hybrid” concepts like *fiducia* or *pactum in favorem tertii*?

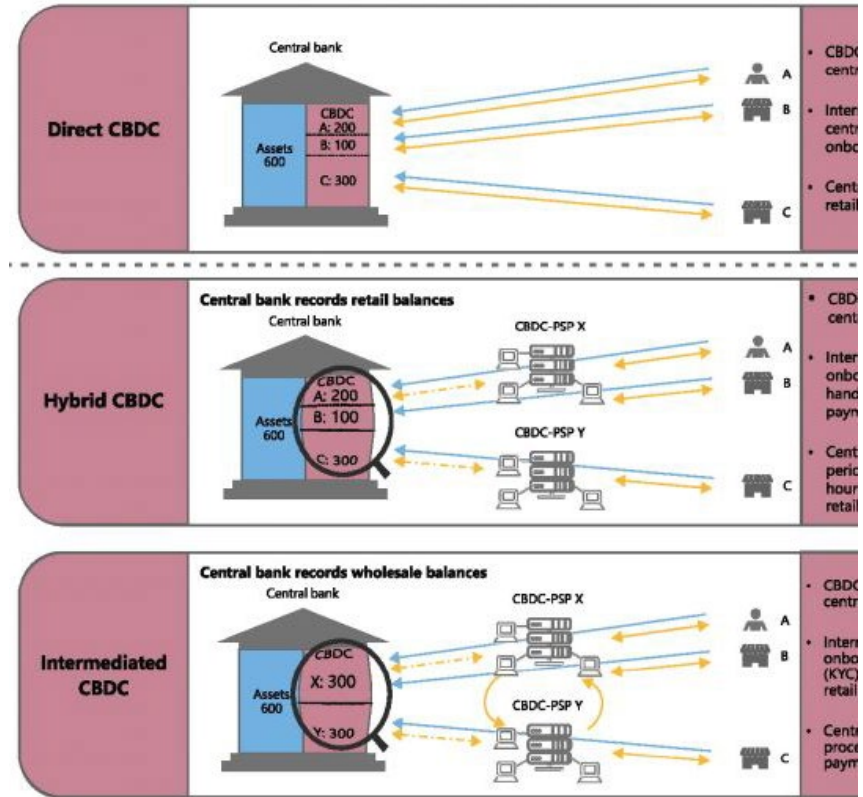
– Requirements:

- Material legislation on various issues
(transfer, treatment in insolvency proceedings etc.)

IV. Transfer of a Digital Euro

– Also: P2P transferable CBDC

- Transferable by users
 - No CB involved (issuance only)
 - No CoB involved (distribution only)
- similar to banknotes



Source: BIS Report "Project Aurum: a prototype for two-tier central bank digital currency (CBDC)" (<https://www.bis.org/publ/othp57.pdf> – retrieved 12 January 2023), p. 5

V. What Will the Digital Euro be, Really? (1)

Point of Departure:

- Central bank liability item
- Distribution: intermediaries
- **Digital banknote?**

But:

Settlement of transactions: Eurosystem

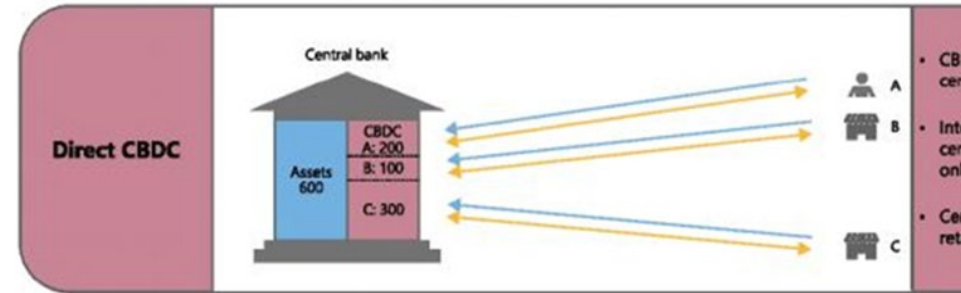
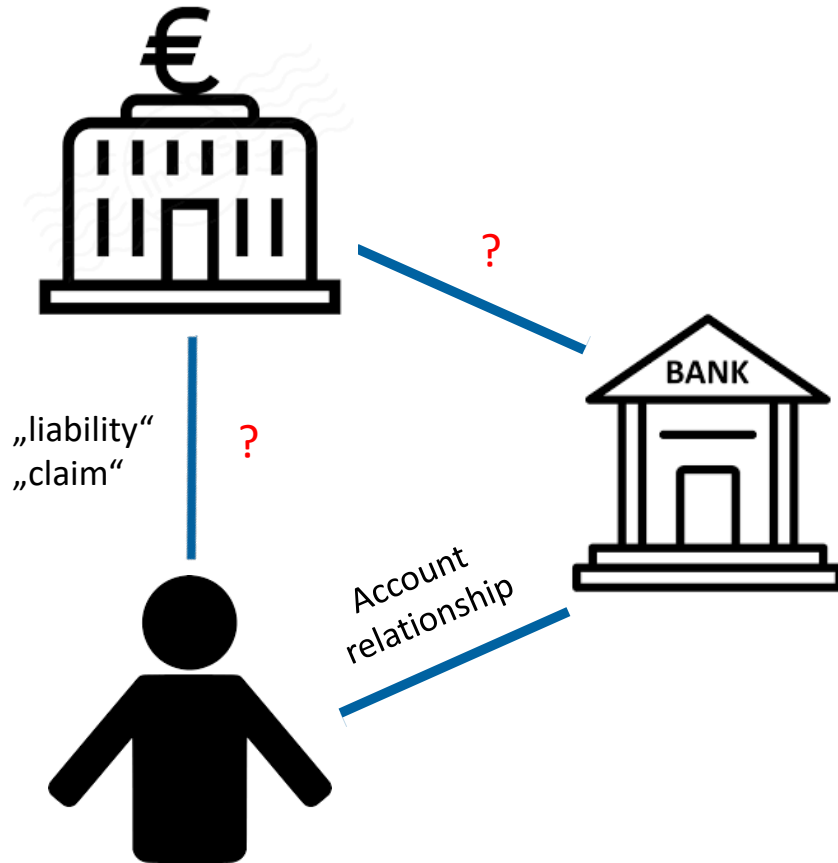
- **Central bank book money?**

Then again:

Account management relationship: only intermediaries ↔ users

- **Hybrid?**

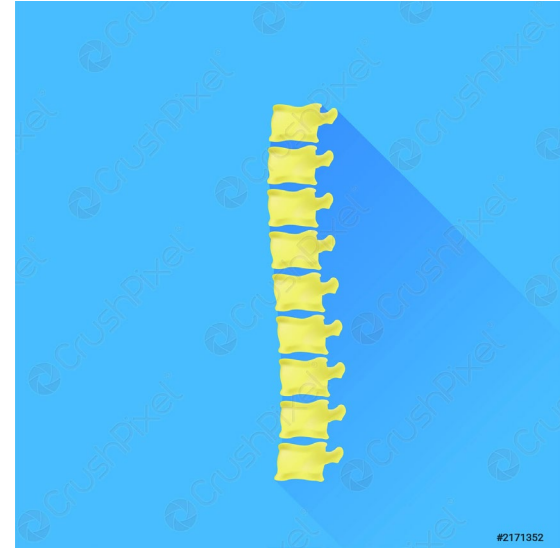
V. What Will the Digital Euro be, Really? (2)



Settlement: Eurosystem

Article 133 TFEU regulation

Civil law backbone?





Thank you very much! Questions?