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ELECTRONIC MONEY, WAR ON CASH, AND THE FUTURE OF LAW OF OBLIGATIONS IN THE CIVIL LAW LEGAL SYSTEM[***]

Summary

This paper is written with the intention of offering possible answers to the hypothetical question of what would be the consequences for the law of civil law legislation in the field of law of obligations if cash were totally abolished, and if electronic money were to become the only means of payment in the future? The authors conclude that, firstly, the right of ownership, in the form in which this right exists in countries operating on the basis of civil law, would no longer exist on money in these jurisdictions, because electronic money is an intangible thing. Consequently, the existing rules on transfer of ownership on money and on the place and manner of payment of monetary obligations would become obsolete. Also, loan agreements regarding money would not exist anymore, leaving only credit agreements, which are a totally different contract form. Deposits of money would also be effectively abolished.

As long as there is at least a theoretical possibility that electronic money could be converted into physical money and claimed as banknotes and coins, nothing would change in principle. The existing legal instruments of law of obligations would be absolutely adequate in regulating such a situation, even if in practice the vast majority of payments would be conducted in electronic money.

Keywords: *Money, Electronic Money, Civil Law System, Roman Law, War on Cash, Payment, Obligations, Banking.*

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1. Introduction. Electronic money

The first internet payment was made in 1994, only thirty-something years ago.[1] At the present day, digital payment has already become dominant in many countries, and in some of them the cash payment makes only a small portion of overall payments. In the UK, for example, in 2013, the majority of payments were still done in cash; in 2023, it was only 12%.[2] Furthermore, in some countries, like Sweden, cash was planned to be completely abolished in the very near future, and although the projection from 2018 that cash would completely disappear in Sweden until 2025 proved false,[3] it is obvious that this country already constitutes a near-cashless society. Digital or electronic money[4] seems to be becoming the dominant form of money in many countries, and in some of them cash is already legally limited to small everyday payments of physical persons. According to a regulation of the European Parliament[5], from 2027 onward, cash payments will be limited to payments up to 10.000 euros, with very few exceptions. In most of the world (especially the Middle East, Eastern Europe, Africa, South Asia, Japan, and some countries of Latin America), cash will certainly not disappear in the near future. But the USA, the Commonwealth, the EU, and China are underway to becoming cashless very soon.

Putting social, political, and economic consequences aside for the moment, we must pose the question, what would the eventual abolishment of cash mean for us legal professionals? Would the existing legal instruments still be adequate to regulate the new reality?

2. A preliminary question - ownership in common law and ownership in civil law

In the countries of the common law legal system, or, in other words, countries of Anglo-American law, there is no reason to raise this question at all, for two reasons.

[1] N. Jindal, "Evolution of Digital payments and its impact on the Economy", *TIJER – International Research Journal*, 1, *https://research-archive.org/index.php/rars/preprint/view/573,* 10. 6. 2025.

[2] Treasury Committee, *House of Commons committee report*, 30 April 2025, 6.

[3] https://www.nytimes.com/2018/11/21/business/sweden-cashless-society.html

[4] This article is dedicated to digital or electronic money in the wider sense, understanding under this term any currency or money that is stored or managed on computer systems, especially over the internet. The term is applied to any money in digital form, including both government and bank issued and so-called crypto currency, which is not reliant on any public or financial authority. As a sidenote: It is commonly known that the digitalization process is creating many new challenges for lawyers. On some other contemporary legal problems regarding digitalization see A. Živković, "Computer programs legal protection framework with special reference to artificial intelligence ChatGPT", *Strani pravni život* 3/2024, 317–338; V. Marković, „Elektronsko glasanje – trojanski konj ili deus ex machina u savremenim demokratijama", *Strani pravni život* 3/2023, 427–446; J. Ćeranić Perišić, „Regulisanje upotrebe veštačke inteligencije u uporednom pravu", *Pravna riječ* 71/2025, 677–692; J. Ćeranić Perišić, „Koncept posredne odgovornosti u uporednom pravu – s posebnim osvrtom na posrednu odgovornost u onlajn okruženju", *Pravna riječ* 69/2024, 684–699.

[5] Regulation (EU) 2024/1624 of the European Parliament and of the Council of 31 May 2024 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing, *PE/36/2024/REV/1*

Firstly, because the system of electronic or non-contact payment without physical money was invented in the United States, and it has been known there in various forms for a very long time.[6] The rest of the world just follows this example and is trying to adapt to it.

Secondly, for the simple reason that, in common law countries, the right of ownership can exist on both tangible and intangible property (like intellectual property), and on so-called financial assets, like bank deposits, bonds, or contractual rights. It is irrelevant if money exists in physical form, or as electronic money, because in both cases it is systemized into the category of financial assets; in both cases it is considered property, and subject to the right of ownership. Namely, the property rights of common law are not identical to the category known to the continental legal practitioners as real rights or, to use the Latin term, *iura in re* (literally: rights on things). Common law property rights are not concerned with things: the object of these rights is not the thing itself, even when tangible, but rather the interests of a person in a thing.[7]

But ownership and property mean something completely different in the countries operating on the basis of civil law, also known as Roman law or continental

[6] It is well known that every single stage in the development of electronic payment, from the introduction of electronic fund transfers (EFT) in 1871 and charge cards in 1914 by Western Union, across the evolution of the charge cards into modern credit cards by Diners Club and American Express in the 1950's, first internet payment by First Virtual Payment system (FVIPS) in 1994, development of Pay Pal as a first prominent online payment platform, to the rise of e-commerce companies like Amazon and eBay in the early 2000's took place in America. For more information on the evolution of digital payment see Jindal, 2025.

[7] According to Blackstone (W. Blackstone, *Commentaries on the Laws of England in Four Books*, Clarendon Press, Oxford 1765-1769 cited according to the American edition of 1893: Philadelphia: J. B. Lippington Company, 103), *The third absolute right, inherent in every Englishman, is that of property: which consists in the free use, enjoyment, and disposal of all his acquisitions, without any control or diminution, save only by the laws of the land.* Although it might seem similar to the Roman definition of ownership as an absolute right, the reference to a thing as an object of rights is remarkably absent. For Blackstone's notion of property, see P. J. Badenhorst, "Sir William Blackstone and the Doctrine of Subjective Rights", *Obiter* 1/2023, https://hdl.handle.net/10520/ejc-obiter_v44_n1_a11. As stated by K. Gray and S. Francis Gray, the law of property is concerned not with things, but rather with interests (or rights) on things. It is these interests that the law of property describes and defines, and which are to be regarded as 'property'. Further, the author states that the very concept of property is somewhat elusive. Whereas the thing itself may be tangible, the interest in the thing is inevitably intangible or abstract. As Gray states, where there is a transfer of property, one transfers not a thing but a "bundle of rights", and it is the "bundle of rights" that comprises the "property". (K. Gray, S. F. Gray, *Elements of Land Law*, Oxford University Press, Oxford 2009, 87-88). Similarly, in a decision of the Court of Australia in *Yanner v Eaton* it is said that 'property' does not refer to a thing; it is a description of a legal relationship with a thing; it refers to a degree of power that is recognised in law as power permissibly exercised over the thing (Court of Australia in *Yanner v Eaton* (1999), *201 CLR 351*). The usual legal term in common law to indicate the object of property rights is not a thing but a chose. Choses are divided into choses in possession and choses in action. According to the HMRC internal manual, choses in possession are tangible property, transferred by assignment, or by manual delivery, while the choses in action are intangible property - rights of action to obtain money. They are transferred by documents. They include loan debts, insurance policies, bank balances, copyright, negotiable instruments, patents, holdings in companies, interests in other estates, partnership interests, options, goodwill (https://www.gov.uk/hmrc-internal-manuals/trusts-settlements-and-estates-manual/tsem6016). According to Bridge, choses in action can be classified in six categories: rights or causes of action; debts; rights under a contract; securities; intellectual property; leases (M. Bridge, *Personal Property Law*, Oxford University Press, Oxford 2015, 33). Rights classified as choses in action are under a different legal regime, because they cannot be acquired through possession, see for example Blackstone, 558 ss.)

European law. These include most of Europe, Latin America, Africa, the Middle East, ex-Soviet countries, and most of East Asia. In almost every roman law-based legislation, and therefore in most of the world, money is, in a legal sense, a corporeal, fungible thing, and only corporeal things can be considered property and be an object of the right usually translated in English as "ownership" (*proprietas*; *dominium*). However, it has little to do with the ownership of the common law. In common law, ownership is any absolute patrimonial right, including those on intangible assets. One can "own" a debt in the same way in which he can be the owner of a house or a car. In Roman law, on the other hand, intangible assets can have material value and be considered patrimony (*patrimonium*), but not property. The right of ownership, which Roman law usually defines as an absolute right on a thing, can exist only on corporeal assets (*res corporale*).[8] No real rights can exist on "intellectual property", and the rights

[8] In the legal vocabulary of the civil law countries the same word is typically used for ownership as a subjective right, and for a thing that constitutes property, as the object of this right. It is usually either transcription (for example it. *proprietà*, fr. *propriété*, sp. *propiedad*) or translation (for example ger. *Eigentum*, sr. *svojina*) of the Latin word *proprietas*. On the roman notion of ownership see for example F. Gallo, "Patrimonio e cose nella famiglia romana arcaica", in: *Atti del convegno - Milano 22-23 ottobre 1992*, Bologna 1994, 91–103; F. Piccinelli, *Studi e ricerche intorno alla definizione «Dominium est ius utendi et abutendi re sua quatenus iuris ratio patitur» Con una nota di lettura di L. Capogrossi Colognesi,* Jovene, Napoli 1980; P. Birks, "The Roman Law Concept of Dominium and the Idea of Absolute Ownership", *Acta Juridica*, Cape Town 1985, 1–31; R. Robaye, "Du 'dominium ex iure Quiritium' à la proprieté du Code civil des Français", *RIDA* 44/1997, 311–332. The definitions of property/ownership in modern civil codes are mostly based on the famous quote of the classical jurist Ulpian from D.8.5.8.5, according to which the ownership/property is the full power over a thing (*plena in re potestas*). Let us cite a few examples of definitions of property from civil law legislations. According to the § 544 of the French Civil Code of 1804 (CC), *property is the right of enjoying and disposing of things in the most absolute manner, provided they are not used in a way prohibited by the laws or statutes.* French Civil Code (CC), *Code civil des Français. Édition originale et seule officielle*, 21 March 1804, Création Loi 1804-02-07 promulguée le 17 février 1804, current version is available at: https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070721/). In the Austrian Civil Code of 1811, we find both the definition of ownership as subjective right (*the power to dispose of the substance and uses of a thing as one pleases, and to exclude anyone else from it*), and the definition of property as its object (*everything that belongs to someone, all his physical and incorporeal things*) (Austrian Civil Code (ABGB), *Allgemeine bürgerliche Gesetzbuch*, 1 June 1811). For a short overview of the development of the property term in Austria see D. Brajović, "Legal Theory and Political Pragmatism by Legal Transfers – The Case of South-Slavic Collective Property", in: *Edge of Tomorrow; The Next Generation of Legal Historians and Romanists: Collection of Contributions from the 2022 International Legal History Meetings of PhD Students* (eds. J. Tauchen, D. Kolumber), Masarykova Univerzita, Brno 2022, 94–96. In the German Civil Code (BGB), there is no definition of ownership, but there is an explanation of content of this right, according to which the owner of a thing may dispose of the thing as he sees fit and exclude others from any interference, if it does not harm the rights of third parties. See § 903 German Civil Code (BGB), Bürgerliches Gesetzbuch of 1 January 1900, *Reich Law Gazette (Reichs-Gesetzblatt)* 21, version of 2 January 2002, Federal Law Gazette (Bundesgesetzblatt) I, page 42, 2909). This formulation seems to have had influenced the norm of the Italian Civil Code of 1942 (CCI): § 832 (Italian Civil Code (CCI), *Codice civile*, *GU Serie generale n. 79 del 04. 04. 1942, R.D. 16 marzo 1942, n. 262, Ultimo aggiornamento: 2025*). Similar approach we find in the Civil Code of Brazil (CCB) of 2003: § 1.228. Brazilian Civil Code, *Código Civil*, *Lei nº 10.406*, January 10, 2002). One of the clearest definitions of the right of ownership we find in the Civil Code of Chile (CCCh) of 1857, with specific reference to the tangible thing (*res corporale*): § 582. (Civil Code of Chile, *Código Civil de la República de Chile*,1855). The Serbian Law on Foundations of Property Law Relations (ZOOSO) from 1980 also implies that only tangibles (movable and immovable things) can be subject of the right of ownership: § 1. (Law on Foundations of Property Law Relations [Zakon o osnovama svojinskopravnih odnosa] (*Sl. list SFRJ*, br. 6/80 and 36/90, *Sl. list SRJ*, br.

from this category are not considered to be a type of ownership, but a category of rights *sui generis*, even if a translation of the English term is often used in legal vocabulary. An existing debt obligation, on the other hand, can be subject to various real rights like usufruct, use, and even pledge, but ownership can exist only on corporeal property.[9]

29/96 and *Sl. glasnik RS*, br. 115/2005). Similar is the formulation of the § 240 of the Chinese Civil Code (ChCC): *An owner is entitled to possess, use, benefit from, and dispose of his own immovable or movable property in accordance with law* (Civil Code of the People's Republic of China, *Adopted at the Third Session of the Thirteenth National People's Congress on May 28, 2020*, English translation available at: *http://en.npc.gov.cn.cdurl.cn/pdf/civilcodeofthepeoplesrepublicofchina.pdf*).

[9] The division of things into corporeal (tangible, *res corporale*) and incorporeal (intangible, *res incorporale*) can be found for the first time in the 2nd century, in the famous Institutions, a book of the classical jurisprudent Gaius (G.2.1.12-14). Later it was accepted by classical jurisprudent Paulus (D.8.1.14pr; D.41.3.4.26), by the compilers of the *Epitome Gai* (EG.2.1.2-3), in the Justinian's legislation (C.5.13.1.7; C.7.33.12.3A; C.7.33.12.4; C.7.37.3.1D), and by the compilers of *Corpus Iuris Civilis* (D.1.8.1.1; I.2.2; I.2.20.21; I.3.10.1). According to Gaius, the corporeal things are tangible things (*qui tangi possunt*), and from the rest of the text it can be clearly deduced, that only they can be subject to the right of ownership. Incorporeal things are intangible (*qui tangi non possunt*). They are, in essence, rights, or, more precisely patrimonial rights other than ownership, like inheritance, usufruct and debt (*hereditas, ususfructus, obligationes*), even if their object is a corporeal thing: G.2.1.12-14=I.2.2=EG.2.1.2-3=D.1.8.1.1: *Quaedam praeterea res corporales sunt, quaedam incorporales. corporales hae sunt, quae tangi possunt, veluti fundus homo vestis aurum argentum et denique aliae res innumerabiles: incorporales sunt, quae tangi non possunt, qualia sunt ea, quae in iure consistunt, sicut hereditas, usus fructus, obligationes quoquo modo contractae. nec ad rem pertinet, quod in hereditate res corporales continentur: nam et fructus, qui ex fundo percipiuntur, corporales sunt, et id quod ex aliqua obligatione nobis debetur plerumque corporale est, veluti fundus homo pecunia: nam ipsum ius successionis et ipsum ius utendi fruendi et ipsum ius obligationis incorporale est. eodem numero sunt et iura praediorum urbanorum et rusticorum, quae etiam servitutes vocantur.* The right of ownership (*proprietas*; *dominium*) is not an incorporeal thing, because it is identified with its object, a thing. On *res incorporales* in roman law see R. Monier, "La date d'apparition de dominium et de la distinction juridique de 'res' en 'corporales' et 'incorporales'", in: *Studi in onore di Siro Solazzi nel cinquantesimo anno del suo insegnamento universitario* (ed. S. Solazzi), Napoli 1949, 357–374; G. Pugliese, "Dalle « res incorporales » del diritto romano ai beni immateriali di alcuni sistemi giuridici odierni", *Rivista Trimestrale di Diritto e Procedura Civile* 36/1982, 1137–1198; P. Zamorani, "Gaio e la distinzione «res corporales» «res incorporales»", *Labeo* 20/1974, 362–369; F. Baldessarelli, "A proposito della rilevanza giuridica della distinzione tra res corporales e res incorporales nel diritto romano classico", *RIDA* 37/1990, 71–116; on contemporary legal solutions see J. W. Tellegen, "'Res incorporalis' et les codifications modernes du droit civile", *Labeo* 40/1994, 35–55; G. Pugliese, *«Res corporales», «res incorporales» e il problema del diritto soggettivo*, Giuffrè, Milano 1951; M. Beghini, I. Zambotto, "'Res corporales' and 'res incorporales'. Roman foundations and current development of a bipartition", *Roma Tre Law Review* 2/2022, 7–44. On things and materiality of the object of real rights in the roman law in general see J.-F. Gerkens, *'Aeque perituris...'. Une approche de la causalité dépassante en droit romain classique*, Collection Scientifique de la Faculté de Droit, Liège 1997; B. Kupisch, "Vendita e trasferimento della proprietà nella prospettiva storico-comparatistica", in: *Atti del congresso internazionale Pisa-Viareggio-Lucca*, Giuffrè, Torino 1990, 17–21; G. Scherillo *Lezioni di diritto romano: le cose*, Giuffrè, Milano 1945; G. Longo, *Corso di diritto romano. Le cose - la proprietà e i suoi modi di acquisto*, Giuffrè, Milano 1946; H. Kreller, "Res als Zentralbegriff des Institutionensystems", *ZSS* 66/1948, 572–599; B. Biondi, *I beni. [Vol. IV del Trattato di Dir. civ. italiano diretto da F. Vassalli],* UTET, Torino 1953; B. Biondi., "Voce «Cosa» [diritto romano]", In: *Novissimo Digesto Italiano* IV, Torino 1959, 1006–1007; B. Biondi, *Los Bienes*, Bosch, Barcelona 1961; G. Astuti, "Voce «Cosa». I. - Cosa in senso giuridico [a) Diritto romano e intermedio]", in: *Enciclopedia del diritto* XI, Giuffrè, Milano 1962, 1–18; R. Naz, "Voce «Res» (Droit romain)", in: *Dictionnaire de Droit Canonique* VII, Paris 1965, 598–599; Y. Thomas, "Res, chose et patrimoine (Note sur le rapport sujet-objet en droit romain)", *Archives de Philosophie du Droit* 25/1980, 413–426; F. Gallo, "'Potestas' e 'dominium' nell'esperienza giuridica romana", *Labeo* 16/1970, 17–58; M. Bretone, *I fondamenti del diritto romano. Le cose e la natura*, Laterza, Roma-Bari 1998; M. Bretone, "La persona e la cosa", *Labeo* 44/1998, 459–461.

3. Money as a tangible thing in the civil law system

Now, let's get back to the problem of money. Both in antiquity and in the modern era, physical money could have had metallic, representative, or fiat value. In the first case, it would be worth as much as the material from which it is made; in the second, it derives its value from the state guarantee that it could be exchanged for precious metal at a fixed rate; in the third case, the value is based only on public trust in state authority. But where the money derives its value from is unimportant, as long as it exists in physical form, like a coin or a banknote.[10] So, the rules on ownership of money and on money obligations remained, in essence, identical for thousands of years.

Different terms have been used in Roman legal sources to indicate money. Sometimes the generic term "res" was used, which can indicate all assets, but sometimes specifically refers to money. Coins as physical objects are usually indicated as "nummi" or "monetae". The terms closest to money in the sense of equivalent of value and means of exchange are "pecunia" and "aes". *Pecunia* can also indicate all corporeal things and sometimes has an even more generic meaning of patrimony (D.50.16.222).[11]

In the previously mentioned famous passage of classical jurist Gaius (G.2.1.12-14=I.2.2= EG.2.1.2-3= D.1.8.1.1), money (*pecunia*) is classified as a physical, tangible thing (*res corporale*). It is important because roman law, as well as all the contemporary laws of the civil law jurisdiction, makes a strict distinction between the ownership of physical money, which is a real right (*ius in re)* effective against all persons (*erga omnes*), and the debt claim (*ius ad re*), which is effective

[10] In ancient Rome, money had only metallic value until the 3rd century BC. Since then, only the gold and silver money had metallic value, while the bronze and copper coins, in which most of the payment was made, had a value significantly higher than their metallic content, based on the state guarantee that it could be exchanged for silver and gold bullion, according to Routledge Dictionary of Economics. Since the III century AD, with the debasement of silver currency and rare production of golden bullion, the roman bronze currency became essentially what we call fiat money, based on the sole trust in state guarantee. On Roman currency, see, for example, K. Harl, *Coinage in the Roman Economy: 300 BC to AD 700*, Johns Hopkins University Press, Baltimore 1996; D. Vagi, *History and Coinage of the Roman Empire, c. 82 B. C. – A. D. 480*, Coin World Amos Press, Sidney-Ohio 1999. But money was always considered to be a tangible thing, no matter where its value came from. The research on the value of roman money can often be useful to fully understand roman legal institutes. See for example: S. Aličić, "A new possible interpretation of Digest of Justinian D.9.2.27.14: A contribution to the study of precursors of environmental law in Roman Law", *Pravni zapisi* 14(2)/2023, 297–314; S. Aličić, „Vinske posude (*vasa vinaria*) u rimskom pravu", *Anali Pravnog fakulteta u Beogradu* 1/2017, 131–150; S. Aličić, „Procena štete po akvilijanskoj tužbi u slučaju uništenja predmeta obligacionog odnosa", *Anali Pravnog fakulteta Univerziteta u Beogradu* 1/2013, 281–298; S. Aličić, "The problem of the material damage in the case of killing of a free man in CO.1.11", *Zbornik radova Fakulteta pravnih nauka* 10/2024, 57–77.

[11] On roman legal terminology regarding money and on money in roman law in general see S. Mrozek, "Zum Kreditgeld in der frühen römischen Kaiserzeit", *Historia* 34/1985, 310–323; S. Mrozek, "Zur Geldfrage in den Digesten", *Acta Antiqua Academiae Scientiarum Hungaricae* 18/1970, 353–360; M. Kaser, "Das Geld im römischen Sachenrecht", *Tijdschrift voor Rechsteschiedenis* 29/1961, 169–229; M. Kaser, *Das Geld im rőmischen Sachenrecht*, J. B. Wolters, Groningen 1961; M. Andreev, "Les notions familia et pecunia dans les textes des XII tables", in: *Acta antiqua Philippopolitana. I: Studia historica et philologica*, Sophia 1963, 173–176; L. Tondo, "Sul senso del vocabolo «pecunia» in età imperiale", *Studi classici e orientali* 26/1977, 283–285.

only against a certain party (*inter partes*). The person that only has a claim to have a certain sum of money paid bears the risk of a possible insolvency of the debtor; the owner of physical money does not. Besides, even if the claim from the bank is payable, the creditor can still have difficulties in claiming money and possibly be forced to use legal means to claim it if the debt is refused or disputed.

The cash payment in the form of transfer of physical money to the creditor was the norm in Roman law. The payment can be made in other ways, for example, by delegation of debt, and this is also considered a monetary payment.[12] Only if the creditor would explicitly or tacitly agree to the money being paid to the banker (*argentarius*)[13] or to any other person could the debtor be discharged in that way. In practice, it would often be the case, and the consent was sometimes interpreted in the widest possible way: if it was commonly known that somebody was making his transaction via another person, it was considered that that money has been leased if deposited by that other person (D.12.1.15). Although this example refers to the creation of a real contract rather than the payment of existing debt, it nevertheless shows a general tendency of wider interpretation of the notion of consent. So, if a person regularly accepted payments on a bank account, it would be considered that he had received the money if it was paid on that account. In practice, a lot of transactions would be done on bank accounts instead of in a physical form, just like today. The ancient Romans knew of solving a monetary obligation in other ways than the physical transfer of money, and also developed sophisticated instruments of delegation of debt, many of which are still in use.[14]

The electronic money we use today is no more imaginative, nor is it less corporeal than "book money", money registered on paper or deposited on bank

[12] D.50.16.187 *Verbum 'exactae pecuniae' non solum ad solutionem referendum est, verum etiam ad delegationem.*

[13] On roman bankers, see G. Thielmann, *Die römische Privatauktion. Zugleich ein Beitrag zum römischen Bankierrecht*, Duncker & Humblot, Berlin 1961; W. Osuchowski, "L'argentarius, son rôle dans les opérations commerciales à Rome et sa condition juridique dans la compensation à la lumière du rapport de Gaius Gai IV", *Arch. Iulid. Cracoviense* 1/1968, 67–80; A. M. Giomaro, "Actio in factum adversus argentarios", *Studi Urbinati* 45/1976-77, 53–100; Ch. T. Barlow, *Bankers, Moneylenders, and Interest Rates in the Roman Republic*, University Microfilms Internat, Michigan 1981; J. de Churruca, "Die Gerichtsbarkeit des praefectus urbi über die argentarii im klassischen römischen Recht", *ZSS* 108/1991, 304–324; M. A Penalver Rodriguez, "La Banca en Roma", in: *Estudios J. Iglesias* III, 1988, 1531–1575.

[14] On Roman legal institutes like expensilatio, chirographum, delegatio, novatio, cessio and expromissio see, for example, R.M. Thilo, *Der Codex accepti et expensi im Römischen Recht. Ein Beitrag zur Lehre von der Litteralobligation*, Göttinger Studien zur Rechtsgeschichte, Band 13, MusterSchmidt, Göttingen 1980; A. Castresana Herrero, "El chirographo y la syngrapha: Significación juridica desde la Republica hasta Justiniano", in: *Estudios A. d'Ors I*, Pamplona 1987, 361–380; G. H. Maier, "Zur Geschichte der Zession", in: *Festschrift Rabel* 2, Mohr, Tübingen 1954, 205–233; W. Endemann, *Der Begriff der delegatio im klassischen römischen Recht*, N. G. Elwert Verlag, Marburg 1959; R. Feenstra, "L'effet extinctif de la novation", *Tijdschrift voor Rechsteschiedenis* 29/1961, 397–415; W. D. Gehrich, *Kognitur und Prokuratur in rem suam als Zessionsformen des klassischen römischen Rechts*, Schwartz, Göttingen 1963; P. Cosentino, "Osservazioni in tema di mandatum e di delegatio. Contributo alla dogmatica della delegazione di credito in diritto romano", *BIDR* 69/1966, 299–336; C. Salkowski, *Zur Lehre von der Novation nach Römischem Recht. Ein Beitrag zum Römischen Obligationenrecht*, M. Keip, Frankfurt 1968; G. Sacconi, *Ricerche sulla delegazione in diritto romano*, Giuffrè, Milano 1971; W. Rozwadowski, "Studi sul trasferimento dei crediti in diritto romano", *BIDR* 76/1973, 11–170; H. Herskowitz, "Roman Literal Contract and Double-entry Bookkeeping", *Journal of Accountancy* 5/1930, 350–353.

accounts, which has been used for thousands of years. As a matter of fact, it is older than coinage: the first "book money", in the form of transferable claims to deposits of various goods in warehouses of Sumerian temples, was registered on clay tablets in ancient Mesopotamia a couple of thousand years before the first coins were minted in Asia Minor in the 7th century BC.[15] So, the introduction of electronic money, instead of "book money", does not necessarily represent a novelty in a strictly legal sense. The legal instruments created in antiquity are absolutely adequate to regulate it, as long as the possibility of payment in cash on request exists.[16]

But if cash should be totally abolished in the future, it would change things, and drastically, in the following ways:

4. Existing rules on transfer of ownership over money and on the place and manner of payment of monetary obligations would become obsolete

It is well known that the real rights that belong in the category of *res incorporales* cannot be transferred by physical transfer (*traditio*) or acquired through the *usucapio*, even when their object is a tangible thing, as is the case with *servitudes*, like *iura praediorum*.[17]

On the other hand, the right of ownership on movable things must be transferred, most often, by physical transfer (*traditio*) of a thing, or by a specific act of consensus of the parties. For immovable things, this act is usually substituted with a registration in public registers. Both for movable and immovable things, a contract or other legal title is only a *iusta causa* for the transfer of ownership, which, in ancient Roman law as well as in many modern civil law legislations, should be done by a separate act: physical handing to the acquirer if the thing is movable, or by registration if immovable.

As clearly stated, for example, in the ABGB, the *mere title does not constitute ownership. Ownership and all real rights in general can, except in the cases specified by law, be acquired only through legal transfer and acceptance* (§425 ABGB) The

[15] See, for example: S. Svizzero, C. A. Tisdell, "Barter and the origin of money and some insights from ancient palatial economies of Mesopotamia and Egypt", in: *Economic Theory, Applications and Issues*, University of Queensland, 2019, 1–31; M. Ezzamel, *The Economy of Ancient Egypt*, Taylor and Francis, 2024.

[16] As a sidenote: Cash is not the only asset undergoing such a transition leading to a de facto limiting of property rights as understood in the continental law system. On some aspects regarding property on living space see: D. Brajović, „Aktuelna stambena politika Republike Austrije u sklopu širih anti-kriznih mera", in: *Međunarodni naučni skup Izazovi i perspektive razvoja pravnih sistema u XXI vijeku: zbornik radova*, Pravni fakultet Univerziteta u Banjoj Luci 2024, 352–354.

[17] D.8.1.14pr. Paulus libro quinto decimo ad Sabinum *Servitutes praediorum rusticorum etiamsi corporibus accedunt, incorporales tamen sunt et ideo usu non capiuntur…;* D.41.1.43.1 Gaius libro septimo ad edictum provinciale *Incorporales res traditionem et usucapionem non recipere manifestum est*; D.41.3.4.26 Paulus libro quinquagensimo quarto ad edictum *Si viam habeam per tuum fundum et tu me ab ea vi expuleris, per longum tempus non utendo amittam viam, quia nec possideri intellegitur ius incorporale nec de via quis, id est mero iure, detruditur.*

Austrian legislator also says that the *movable thing may, as a rule, be transferred to another person only by physical transfer from hand to hand* (§425 ABGB). There are many exceptions, which could make us question the practical importance of the general rule (§427-429 ABGB). Still, a rule is a rule, and if money becomes digital, it would not be applicable on monetary transactions anymore, not even in theory, since none of the exceptions would apply.

Also, some civil law legislations do not know of such a general rule at all and stipulate a so-called translational effect of a contract. It means that property can be transferred by the mere consent of the ex-owner and acquirer. Such is the case with the Italian Civil Code (§1376 CCI). But even in that case, the thing must be clearly individuated and described. In the case of generic things, like money, it means that the coins or banknotes must be either physically transferred to the other party or individuated in some other way (§1378 CCI). In the case of money, it could be done, for example, by deposit in a safe, or individuation by serial number of banknotes. Needless to say, it could not be done with digital money in its current form.

There is also a series of rules regarding the fulfilment of obligations in general, and, more specifically, monetary payments, which would make no sense in the case of money becoming completely digitalized.

Such is the case with general rules of payment of monetary obligations in regard of the place where the payment takes place. They were created in ancient Rome,[18] and are generally similar in all civil law legislations. The debt is generally to be paid in the domicile of the debtor (see, for example, CC §1342-6 and CCI §1498), although some legislations (see, for example, ZOO §320) provide monetary obligations to be an exception, to be paid in the domicile of the creditor. In the case of digital payment, such rules would mostly become obsolete.

The payment could be made to the creditor, and it can be valid if paid to another person only if the creditor ratified it or if he benefited from it (see for example CC §1342-2 and CCI §1188). This would not be true for monetary obligations if they were to become digitalized, because the payment would always be made to the bank, and not to the creditor. The costs of payment should be borne by the debtor according to the CC (§1342-7); but this is usually not true for digital payments.

All o these rules, and many more, would become void and maybe would even be formally abolished in the case of the digitalization of monetary payments. Some are abolished already, like the rule of the CC according to which, *to pay validly, one must be the owner of the thing given in payment, and capable of alienating it. However, the payment of a sum in money or something else which is consumed*

[18] About solutio in the classical Roman law, see, for example S. Cruz, *Da «solutio». Terminologia, conceito e caracteristicas, e anàlise de càrios institutos afins. I. Épocas arcaica e clàssica*, Livraria Almedina, Coimbra 1962; B. Biondi, "Delegatio non est solutio. Precedenti storici ed osservazioni sull'art.1268 C.C.", *Banca Borsa e titoli di credito* 7/1954, 423–434; F. Amarelli, *Locus solutionis. Contributo alla teoria del luogo dell'adempimento in diritto romano*, Giuffrè, Milano 1984.

by use cannot be recovered from the creditor who consumed it in good faith, even though the payment was made by someone who was not the owner or who was not capable of alienating.[19] This rule was repealed by Order No. 2016-131 of February 10, 2016 - art. 2. Obviously, this article was a nuisance to the partisans of digital payment as a norm because it left no doubt that money is primarily a tangible thing, so they decided to simply abolish it. This shows the direction in which these interest groups will further push the legislative agenda.

5. Loan agreements regarding money would not exist anymore, being replaced by a contract of credit, which is a totally different contract

The loan is generally defined in civil law legislations as a contract by which one party, the lender, has the obligation to transfer the property of a certain quantity of money or other fungible and consumable things to the other party, the borrower, and the borrower has an obligation to restitute the same quantity of things, of corresponding species and quality.[20] The things have to be corporeal, fungible and consumable. The fact that only tangible things can be objects of a loan is underlined by the rule that the lender is held responsible for the eventual physical defects of the loaned things, including money.[21] The consumability of the thing is the relevant line of division between the loan for use (*commodatum*) and the loan to own: although the same term is sometimes used for the two contracts, like in the French Civil Code (*prêt*), they are still clearly distinguished and regulated in a different manner. In the case of a loan for use, whose object are inconsumable things, the thing enters only in possession of the borrower, but the property is not transferred, while in the case of the loan in the narrow sense (loan to own), whose object are consumable things, the borrower becomes the owner of the things and is free to alienate them.[22]

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[19] CC Article 1238, *Abrogé par Ordonnance n°2016-131 du 10 février 2016 - art. 2, Création Loi 1804-02-07 promulguée le 17 février 1804.*

[20] For example, CC §1892, §1893; ABGB §983; CCI §1813; §1814; Zakon o obligacionim odnosima - ZOO [Law on Contracts and Torts], (*Sl. list SFRJ*, br. 29/78, 39/85, 45/89 - odluka USJ and 57/89, *Sl. list SRJ*, br. 31/93, *Sl. list SCG*, br. 1/2003 - Ustavna povelja and *Sl. glasnik RS*, br. 18/2020) §557; § 538 Egyptian Civil Code (ECC - Egyptian Civil Code (ECC), قدام (٥٣٨): promulgated by *Law No. 131* of 1948) قدام (٥٣٨): مزتلي دقع ضرقلا دنع ضرتقملا هيإ دري نأ علع ،رخآ ىلع ىثم ءيش ىأ وأ دوقنلا نم غلبم ةيكلم ضرتقملا ىلإ لقني نأ ضرقملا هب متفصو وزعو هرادقم يف ملثم ايئيش ضرقلا ةيامن; Swiss Law of Obligations - SLO (*Obligationenrecht*, *RU 27 377, Federal law of 30 march 1911*) §312. Interestingly, in the Saudi Civil Transactions Law (Saudi Civil Transactions Law, ماظن تالماعلما ةينمدلا, Royal Decree: M/191, June 19, 2023, English translation available at: https://gccbdi.org/sites/default/files/content-files/Resources/KSA%20Corporate%20Governance%20Index/Civil%20Transaction%20Law%20-%20English(3215637.1).pdf), the contract of loan seems to remain a real contract, which cannot even be concluded before the transfer of ownership on the borrowed things: Article 382 *Loan is a contract under which a lender transfers ownership of a fungible thing to a borrower, provided that the borrower returns a thing of the same kind to the lender.* Article 383 *A loan contract may not be deemed concluded unless the borrower receives the borrowed thing.*

[21] See, for example, ZOO §561 and CCI §1821. For classical roman law see D.17.1.34.pr.

[22] CC §1874.

Based on what has been said above, if physical money gets abolished, there will be no loan regarding money anymore, although there would still exist a form of loan regarding other consumable things like oil, sugar or wheat. As for money, only a credit agreement would remain as an option. But the credit was clearly distinguished from the loan since antiquity. At the beginning of the title of Digest D.12.1 *De rebus creditis si certum petetur et de condictione* (*Concerning things which are credited when a certain demand is made and concerning condiction*) in two fragments cited by classical jurists Ulpian and Paul from the end of 2nd and beginning of the 3rd century AD, we read:

> D.12.1.1pr. Ulpian, twentieth sixth book On the Edict: We should, before we come to the interpretation of the words, to say something about the meaning of the title itself. 1. Because thus the pretor inserted many different legal rules regarding different contracts under this title, he started it with the words "things that are credited": namely, it encompasses all the contracts, which we enter into instigated by the good faith of the others; because, as Celsus said in the first book of Questions, the term "to credit" is general; and thus under this title the pretor put in edict also (the actions) on loan to use and on pledge. Because where we, in whatever thing we assent to receive something on the basis of the good fate of another, we say that there is a credit on the basis of a contract. The term "thing" the pretor choose (to use) in a general meaning.

> D.12.1.2pr. Paulus libro vicensimo octavo ad edictum We give a loan when we are not to receive (back) the same specific (thing) that we have given, otherwise it would be loan for use or deposit, but (of the) same category: because if we accept (things) of a different category, for example wheat for wine, it will not be a loan. 1. Giving of a loan consists in those things, that are specified by weighing numbering and measurement, because by giving them we can make a credit, because their category (of things) performs its function by payment in kind: because we cannot make credit by other things, because without the consent of creditor cannot be paid something else instead of something (that has been to be paid). 2. It is namely called giving of a loan (mutuui datio) because, from mine becomes yours (quod de meo tuum fit); and thus, if it does not becomes yours, the obligation is not created. 3. So a credit differs from a loan just as a specific thing from a category: because credit (creditum) exists not only on things, that are specified by weighing numbering and measuring, so that, if we are to receive back the same thing (that we have given), (the thing) is credited. Next, a loan cannot exist, unless the money is paid, while credit can also (exist) if nothing is paid, for example when a dowry is promised after marriage. 4. To give something in a loan the one who gives must be the owner, and there should be no objection, if a son of a family or a slave of the giver made an obligation in regard of the coins that make part of their peculium: it is namely the same, as if you give money by my own will; because in that case I acquire (right of) action, even if the money is not mine. 5. We can also make a credit by words with an act intended to create an obligation, like stipulation.[23]

[23] D.12.1.1pr. Ulpianus libro vicensimo sexto ad edictum *E re est, priusquam ad verborum interpretationem perveniamus, pauca de significatione ipsius tituli referre. 1. Quoniam igitur multa ad contractus varios pertinentia iura sub hoc titulo praetor inseruit, ideo rerum creditarum titulum praemisit: omnes enim contractus, quos alienam fidem secuti instituimus, conplectitur: nam, ut libro primo quaestionum Celsus ait, credendi generalis appellatio est: ideo sub hoc titulo praetor et de commodato et de pignore edixit. nam cuicumque rei adsentiamur*

As can be clearly seen, the term credit in roman law indicates a wider category of contracts whose general denominator is, that one party in the contract gives or promises to give something to another, on the basis of good fate or trust, which is the original meaning of the word *creditum*, and another party has to pay back the same thing or the same amount of things. This category includes loans in the narrower sense, but also other real contracts, namely, loan for use and pledge. Still, loans in the narrower sense are clearly distinguished from other contracts, especially loans for use (*commodatum*), by the fact that their objects are only consumables individuated by weighing, numbering, and measurement (*pondere numero mensura*). The transfer of ownership, no matter if directly or through an agency, is also an essential component of the contract of loan in a narrower sense, because this contract does not exist if the transfer of ownership does not take place. If a party only promises to credit another, but no actual transfer of property on money or other consumables takes place, it is not a loan but some other contract, like verbal stipulation (*stipulatio*) or a promise of a dowry (*dotis dictio*).[24]

Nowadays, in common law the term "credit" seems to have a meaning similar to the one that it used to have in classical roman law: a category of contracts, encompassing but not limited to loans, where one side, a creditor or a lender, provides credit, money or goods, to another, a borrower, which agrees to repay the debt. It seems that the German BGB also uses the term *Kreditvertrag* (credit

alienam fidem secuti mox recepturi quid, ex hoc contractu credere dicimur. rei quoque verbum ut generale praetor elegit. D.12.1.2pr. Paulus libro vicensimo octavo ad edictum *Mutuum damus recepturi non eandem speciem quam dedimus (alioquin commodatum erit aut depositum), sed idem genus: nam si aliud genus, veluti ut pro tritico vinum recipiamus, non erit mutuum. 1. Mutui datio consistit in his rebus, quae pondere numero mensura consistunt, quoniam eorum datione possumus in creditum ire, quia in genere suo functionem recipiunt per solutionem quam specie: nam in ceteris rebus ideo in creditum ire non possumus, quia aliud pro alio invito creditori solvi non potest. 2. Appellata est autem mutui datio ab eo, quod de meo tuum fit: et ideo, si non fiat tuum, non nascitur obligatio. 3. Creditum ergo a mutuo differt qua genus a specie: nam creditum consistit extra eas res, quae pondere numero mensura continentur sic, ut, si eandem rem recepturi sumus, creditum est. item mutuum non potest esse, nisi proficiscatur pecunia, creditum autem interdum etiam si nihil proficiscatur, veluti si post nuptias dos promittatur. 4. In mutui datione oportet dominum esse dantem, nec obest, quod filius familias et servus dantes peculiares nummos obligant: id enim tale est, quale si voluntate mea tu des pecuniam: nam mihi actio adquiritur, licet mei nummi non fuerint. 5. Verbis quoque credimus quodam actu ad obligationem comparandam interposito, veluti stipulatione.* On loan in the roman law see for example O. Stanojević, "La «mutui datio» du droit romain", *Labeo* 15/1969, 311–326; F. Carresi, *Il comodato. Il mutuo*, Unione tipografica, Torino 1950; E. Seidl, "Der Eigentumsübergang beim Darlehen und Depositum irregulare", in: *Festschrift Schulz 1*, Weimar 1951, 373–379; U. Lübtow, *Beiträge zur Lehre von der Condictio nach römischen und geltendem Recht*, Berlin 1952; P. E. Huschke, *Die Lehre des römischen Rechts vom Darlehn und den dazu gehörigen Materien. Eine civilistische Monographie. Nachdruck der Ausgabe Stuttgart 1882*, Schippers, Amsterdam 1965; O. Stanojević, „O nastanku zajma i kamata [De l'institution du prêt et de l'intérêt]", in: *Zbornik radova iz pravne istorije*, Beograd 1966, 103–110; H. A. Rupprecht, *Untersuchungen zum Darlehen im Recht der Graeco-Aegyptischen Papyri der Ptolemäerzeit*, Beck, München 1967; M. Bajić, „Poreklo mutuum-a", in: *Spomenica profesoru Marijanu Horvatu*, Pravni fakultet Zagreb 1968, 291–296; J. Baron, *Die Condictionen*, M. Keip, Frankfurt 1968; E. Saray Tapia, *El mutuo en el derecho romano*, Universidad Catolica de Chile, Santiago 1968; S. Mrozek, 1985; V. Giuffrè, *La 'datio mutui'. Prospettive romane e moderne*, Jovene, Napoli 1989.

[24] On the use of the term *creditum* in ancient roman law see: M. Ricca-Barberis, *Intorno al possesso dei crediti*, Giappichelli, Torino 1950; A. Pariente, "Sobre la etimología de «credere»", *SDHI* 19/1953, 340–342; B. Albanese, "Per la storia del creditum", *Annali del Seminario Giuridico dell'Università di Palermo* 32/1971, 5–179; B. Albanese, "Rilievi minimi sul «credere» edittale", in: *Studi Biscardi*, Milano 1982, 223–233.

contract) in this way. In the new European consumer laws, the term is used exclusively in this meaning, presumably under Anglo-American influence (see, for example, French Consumer Code (*Code de la consommation*) §L311-1.6[25] and Swiss Federal Law on Consumer Credit (*Legge federale sul credito di consumo* 23 March 2001, RU 2002 3846) § 1).

Sometimes, the term is used in a narrower sense, like in the ABGB, for example, where the term *Kreditvertrag* (credit contract) is used for any contract of monetary credit, no matter if it is a classical loan or some other legal instrument,[26] but not for credit in commodities.

But some civil law legislations still use the term credit for a specific contract different than a loan, whose main characteristic is that the lender is not obliged to transfer the ownership on money, but only to make it available to the borrower, which can be done by payment to a bank account. While a loan agreement can be concluded between any physical or legal person and in regard to any consumable goods, the credit contract can be concluded only between a bank and a client, and the object is only money. Such is the case in the CCI[27] and in the ZOO.[28] The Swiss Code of Obligations (*Obligationenrecht*, OR) knows not one, but two different credit contracts, a letter and a mandate of credit (§§ 407-411) as well as credit bonds (§§ 965 ss.).

6. Deposit of money would also not exist anymore

Alongside the loan, the rules on bank deposits would also have to be changed. The very idea of a deposit of fungible things is based on the Roman concept of *depositum irregulare*,[29] that is, a transfer of ownership on fungible, and, generally, consumable things, in which case generally the same rules apply as in the case of a loan. In the case of a deposit of non-fungible things, the thing is transferred only in possession or detention. But in the case of deposit of fungible things, including money, it is regarded not as a form of loan, but as a form of deposit, because it is considered that the contract is concluded in favour of the party that gives the

[25] French Consumer Code (*Code de la consommation*) §L311-1.6 Modifié par LOI n°2017-203 du 21 février 2017 - art. 9 6.

[26] ABGB §988.

[27] CCI §1842 (The opening of a bank credit is the contract by which the bank undertakes to keep a sum of money available to the other party for a given period of time or for an indefinite period.)

[28] ZOO §1065 (With the loan agreement, the bank undertakes to make available to the loan beneficiary a certain amount of funds, for a specified or indefinite period of time, for a purpose or for no specified purpose, and the user undertakes to pay the agreed interest rate to the bank and return the received amount of money at the time and in the manner determined by the contract.)

[29] On *depositum irregulare* see for example: F. Bonifacio, "Ricerche sul deposito irregolare in diritto romano", *BIDR* 49-50/1947, 80–152; B. Adams, "Haben die Römer 'depositum irregulare' und Darlehen unterschieden?", *SDHI* 28/1962, 360–371; H. T. Klami, *'Mutua magis videtur quam deposita'. Über die Geldverwahrung im denken der römischen Juristen*, Helsingfors, Helsinki 1969; W. Litewski, "Le dépôt irrégulier", *RIDA* 21/1974, 215–262; W. M. Gordon, "Observations on «depositum irregulare»", In: *Studi Biscardi. III,* Milano 1982, 363–372; R. Vigneron, "Résistance du Droit romain aux influences hellénistiques: le cas du dépôt irrégulier", *RIDA* 31/1984, 307–324.

things, not in the favour of the person who receives. Still, the irregular deposit is similar to a loan, because, unlike the ordinary deposit, the depositary becomes the owner of the things, and the fault for destruction or theft of the things is always on him, regardless of guilt. Another reason why the difference between these two types of deposit is important is because in the case of the regular deposit the depositary is not entitled to use the money and to lend it to a third party.

The Italian legislator explicitly states that the bank acquires a property right on deposited money; in some other laws, Serbian and Swiss for example, it can be implicitly concluded. Swiss law implicitly states that money has to be physically deposited, because it says that it is presumed that the party accepting the deposit does not have to pay back the same coins but only the same amount of them and that the risk completely passes on the party accepting the thing if the coins are given to deposit without package and seal.[30] Because the depositary gets the property of the money, he is free to dispose of it, and is obliged to pay back not the same coins and banknotes but the same amount of them.[31]

With the abolition of cash, all money would find itself in the status of deposited money. But, without tangible money, the contracts of deposit of money would not be possible to be concluded or executed. According to present legal solutions, then the contract is concluded when parties agree that the deponent would transfer the property of money to the depositary, and the principal obligation of the depositary is to pay the money back.

But if the physical money gets abolished, such an obligation would be invalid as an *obligatio impossibilis*, because there would be nothing to transfer property to. So, if, for example, a contract between a bank and a client would be concluded in the hypothetical cashless future, it would certainly not be the same contract that we call money deposit nowadays, although maybe it will be still called that. But the deposit of other fungible things like oil or wheat would still exist.

Vice versa, the principal prestation of the depositary, to pay back the same amount of money (of course, by transferring property on it), would become impossible and thus invalid. The client of an already existing contract of money deposit would be stuck in the moment of the abolition of cash money stuck in a position of eternal creditor of the bank. The debt and the claim would be transferable, but not payable. If the "bank money", no matter if in the form of electronic money or in an old-fashioned form of book money, gets transferred to another account, for example, for payment of a service or of a product, it is essentially a transfer of claim to the money deposited. But if there were no physical money to claim, the contract could never be terminated through execution.

Needless to say, there is no clear answer in the present legislation, what the right of both the bank and the client would be in its nature? It would certainly not fit into any existent civil law category of either real or obligation rights.

[30] CCI §1766; ZOO §1035, OR (Italian version) §481

[31] See, for example, CC §1932; CCI §1834.

7. Conclusion

The idea of the abolition of money in physical form (banknotes and coins) was, and still is, a predominantly Anglo-Saxon and Germanic affair. As it seems, there are almost no open questions in the common law regarding monetary digitalization.

But for the countries of civil law jurisdiction, the total digitalization would be a jump into the unknown. It would be contrary to the basic legal principles of these systems, and it would put the physical person in a more difficult position with no clear benefit for the public interest. Besides, many existing legal institutes would become obsolete.

The right of ownership, in the form in which this right exists in countries operating on the basis of civil law, would no longer exist on money in these jurisdictions, because electronic money is an intangible thing. This fact would have serious repercussions in the field of law of obligations, because the transfer of ownership and/or possession of a (tangible) thing are the essence of many institutes. With total digitalization, a number of legal institutes would become obsolete and inapplicable to money transactions, and maybe even totally abolished, and centuries of work of jurisprudence and of legal praxis on their development would be wasted.

Firstly, the existing rules on place and manner of payment of monetary obligations that were mostly created with money as a tangible thing in mind, on which ownership and possession should be transferred, would become obsolete.

Secondly, loan agreements regarding money would not exist anymore, leaving only credit agreements, which are a totally different contract form.

Thirdly, the deposits of money, as we know them today, would also be effectively abolished, leaving the legal nature of this institute undefined and unfitting to any existing legal category.

Of course, if there is a possibility that the electronic money could be converted into physical money and claimed as banknotes and coins, nothing changes. Banking existed in ancient Rome too, and thousand-year-old legal instruments are still completely adequate to regulate current monetary transactions, even if in practice the vast majority of payments would be made in electronic money. The fact that most of payment in practice is done by transfer of claim to the bank deposits rather than in real money doesn't matter as long as the deposits are real i.e., claimable, at the end of the chain of payment, in physical money on which property and possession can exist, be transferred, and be claimed.

So, we would strongly recommend maintaining the money in physical form as an alternative to electronic payment. We believe that total abolishment of cash, even if this might seem like a good idea in strictly economical terms, would be a bad idea from the legal point of view, at least for countries of civil law jurisdiction.

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ELEKTRONSKI NOVAC, RAT PROTIV GOTOVINE, I OBLIGACIONO PRAVO U EVROPSKO-KONTINENTALNOM PRAVNOM SISTEMU

Apstrakt

Ovaj rad je napisan sa ciljem da ponudi moguće odgovore na hipotetičko pitanje, kakve bi bile posledice za zemlje evropsko-kontinentalnog pravnog sistema na polju obligacionog prava ako bi gotov novac bio u potpunosti ukinut, i ako bi elektronski novac postao jedino sredstvo plaćanja u budućnosti? Autori zaključuju da bi, pre svega, pravo svojine, u formi u kojoj ono danas postoji u zemljama evropsko-kontinentalnog pravnog sistema, prestalo da postoji na novcu, jer je elektronski novac bestelesna stvar. Kao posledica toga, postojeća pravila o plaćanju, koja su stvorena imajući u vidu prenos prava svojine i prenos državine na novcu kao telesnoj stvari, postala bi bespredmetna. Takođe, ugovor o novčanom zajmu ne bi više postojao, nego samo ugovor o kreditu, koji predstavlja potpuno drugačiju vrstu ugovora. Novčani depozit bi takođe bio praktično ukinut.

Dokle god postoji makar teoretska mogućnost da elektronski novac bude konvertovan u gotovinu i isplaćen u vidu papirnog i metalnog novca, ništa se suštinski neće promeniti. Postojeća rešenja obligacionog prava su u potpunosti odgovarajuća i mogu da regulišu ovu situaciju, čak i ako se u praksi većina plaćanja obavlja u elektronskom novcu.

Ključne reči: *Novac, elektronski novac, evropsko-kontinentalni pravni sistem, rimsko pravo, bankarstvo.*

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