



HAL
open science

A legal analysis of complementary and virtual currencies for sustainable economic development

Luis Roman Arciniega Gil

► **To cite this version:**

Luis Roman Arciniega Gil. A legal analysis of complementary and virtual currencies for sustainable economic development. Banking & Financial Services Policy Report, 2020, Banking & Financial Services Policy Report, 39, p. 1-12. hal-03190132

HAL Id: hal-03190132

<https://hal.univ-lille.fr/hal-03190132>

Submitted on 7 Apr 2021

HAL is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L'archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d'enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.

A Legal Analysis of Complementary and Virtual Currencies for Sustainable Economic Development

By Luis Roman Arciniega Gil

Summary

A monetary ecosystem has developed in recent years transforming the concept of money and its *status quo*. Complementary currencies (CCs) are types of exchange media that support the creation of monetary ecosystems. CCs can contribute to sustainable economic development as they connect stakeholders, strengthen community relations, and democratize the control over exchange mechanisms. In France, CCs have developed at the local level as complementary local currencies (CLMs) aiming to favor local exchanges and revitalize the economy of French territories. At the same time, the digital revolution is influencing present dynamics by dematerializing legal money and creating new forms of value, such as virtual currencies. Nevertheless, legal issues exist with regard to this monetary diversification, such as the legal recognition, sovereignty, and convertibility of these types of currency systems. This paper focuses on the legal aspects of monetary diversification both in the local and virtual realm, and analyses the legal framework and possible benefits.

Introduction

Our current monetary system is defined by two joint characteristics: 1) a monetary creation based on debt, whose issuance by granting loans of commercial banks represent 90% of the money supply and; 2) a monopoly held by central banks over legal money issuance, where they play the role as supervisors of the system (Blanc, 2000 & Lietaer et al., 2012). Many complementary and virtual currencies initiatives are critical of this dominant monoculture system and lay the responsibility of economic crises on the monetary creation model based on bank debt. For those reasons, diverse monetary systems

have been emerging in recent years reclaiming the right over currency creation, by proposing monetary innovations (J. Blanc 2000 in Martin, 2018), including within the virtual realm.

Nevertheless, one of the main roadblocks with regard to monetary diversification is the legal recognition of other forms of money. At the European level, for instance, the monetary monoculture is protected by law from the very fundamental documents that gave origin to the European Union (EU). Articles 105 of the Maastricht treaty and 128 of the Lisbon treaty consolidate a single monetary policy in the EU by stating that “The European Central Bank shall have the exclusive right to authorize 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”.

In the same vein, at the national level, French law reinforces this monetary monoculture by incorporating into its national legislation the considerations established by the European legislation. Articles L.111-1 and L141-5 of the French monetary and financial code (FMC) state that “the currency of France is the euro” and “the Bank of France is the only body authorised (...) to issue legal tender notes”. By exclusion, any type of monetary creation other than the euro is not recognized by law at both European and French national level.

Emerging monetary systems reclaim the right over currency creation by proposing monetary innovations that seek to democratize the control over exchange mechanisms. Complementary currency systems (CCs) are types of exchange media that are developed by a group of stakeholders in complement to the official legal tender (Fare & Ould Ahmed, 2018). In the same

The author is a PhD candidate in digital law at the Univ. Lille, CNRS, UMR 8026—CERAPS—Centre d’Études et de Recherches Administratives Politiques et Sociales, F-59000 Lille, France.

way, albeit in a contested manner, crypto-currencies are digital objects based on computer networks that allow carrying out transactions validated between two or more persons, thanks to a technology called “block-chain” (INC, 2019). For Lietaer et al., (2012), increasing monetary diversity in a given economy from a single currency monopoly to a diverse monetary ecosystem of parallel currencies can result in greater economic stability, social well-being, and sustainable economic development.

Yet, the so-called digital revolution is transforming social relations and creating the cross-border dynamics on the internet that are challenging existing monetary legal frameworks (ECB, 2012 & OECD, 2018). Rethinking the monetary system as an ecosystem of parallel currencies working at the same time, may be a viable option to face some of the great challenges of our era, including the recurring financial and monetary crises, which point to the fact that our monetary system also faces its own limits (Lietaer et al., 2012). Adapting legal frameworks to both CCs and virtual currencies is essential in order to promote sustainable economic development.

This paper focuses on two types of monetary systems: complementary local currencies (CLMs) and crypto/virtual currencies/assets. It makes use of qualitative and legal research, and analyses their legal nature, use, and recognition. A particular emphasis is given to the benefits of local monetary systems based on ethical, social, and ecological principles, to promote economic resilience and sustainable local communities. With respect to virtual currencies, this paper analyses the legal nature and issues with regard to the cross-border dynamics that exist on the internet. Last but not least, it explores areas of improvement for the sustainability of each one of the projects presented.

With regard to the content, it starts by briefly setting the context and theoretical/conceptual framework of an emerging monetary ecosystem, highlighting the core elements and importance of monetary diversification. Afterward, it explores the legal framework behind CLMs and crypto-currencies, in light of social dynamics that promote the development of a monetary ecosystem. Similarly, this paper cites and analyses cases in order to shed light on legal problems existing today. Finally, it underlines areas of improvement and states concrete

actions that can be considered legally in order to promote sustainable economic development.

The Re-Emergence of a Monetary Ecosystem

A monetary ecosystem implies creating diversity in terms of exchange media and types of issuing institutions, including the government. Diverse and ethical monetary systems can contribute to sustainable economic development as they connect stakeholders, strengthen community relations, and democratize the control over exchange mechanisms (Lietaer et al., 2012). Notwithstanding, despite its relevance in terms of economic resilience and efficiency, monetary diversity faces the issue of legal recognition, and the global cross-border dynamics in the digital age are posing an increasing challenge to existing institutional frameworks.

To begin with, monetary diversity is not a new idea. Ancient societies such as Dinastic Egypt or the Central Middle Ages in Western Europe operated under systems of parallel currencies that resulted in greater economic stability, equitable prosperity, and sustainable economies, evidenced by the rich heritage known today (Lietaer et al., 2012). At the present time, the close relationship between these systems is called complementary currency systems (CCs). However, the emergence of diverse monetary systems in recent years seems to be correlated more to the last and recurrent economic crises, in search of the same principles of economic stability and social well-being (Fare & Ould Ahmed, 2018).

For instance, the emergence of CCs in the 20th century is correlated to periods of high inflation—such as the Great Depression of the 1930s in the USA, Germany, Austria, and Switzerland—that resulted in the issuance of a series of community monetary certificates (Calvo & Morales, 2014). A successful example of monetary creation during the period that still exists today is the Swiss WIR, created in 1934. This CCs is an independent, dematerialized, and low-interest currency, whose network presently comprises more than 60,000 small and medium-sized enterprises (SMEs) across all economic sectors, trading around 1.5 billion Swiss francs annually (Kalinowski, 2011). More recently, the emergence of the crypto-currency Bitcoin in 2009 is also perceived as a mechanism that contests the global financial crisis of 2008 (MEAC, 2016). Crypto/virtual currencies/assets

are digital objects based on computer networks in which transactions are validated between two or more persons thanks to a technology called “blockchain” (INC, 2019). As of 18 September 2019, there were 2,871 Bitcoins in circulation worth €246 billion (INC, 2019).

In general, CCs attempt to respond to the systemic failures of the dominant global monetary monoculture of money, by attempting to mimic diversity and interconnection in natural ecosystems. Years of study, particularly within the field of ecological economics, have led to a deep scientific understanding of the complex linkages between human and natural systems (Lietaer et al., 2012). Almost all natural systems show that higher diversity of components and denser interactions between networked components can favor resilience within a system in periods of difficulty or change. For example, in a forest fire, a flood, or any other disaster that exerts significant pressure on the environment, makes the system to respond first by operating at the level of extreme resilience, where diversity is greatest but efficiency low; and then, as the species best adapted to the new context begin to flourish, the system gradually returns to the window of viability and sustainability (Lietaer et al., 2012). CCs are inspired on the complex functioning of natural systems where diversity and connectivity play a key role in search of the optimum balance for sustainability within the economy, between efficiency and resilience.

Indeed, it is considered that any complex system is sustainable only if balance is maintained between efficiency and interconnected diversity. This implies that when greater focus is given to efficiency, diversity can be compromised and resilience is consequently affected, resulting in a systemic collapse. This is what seems to be happening to our current monetary system. The global monetary monoculture based on the recognition of a single national currency, created through bank debt, in search of efficiency and limitless growth, seems to be fostering a fragile and unsustainable monetary system (Lietaer et al., 2012). This includes all legal and liquid currencies that can be exchanged, such as the centralized bank fiduciary currencies that include the euro and the dollar.

Theories on monetary diversification call for a democratization of the monetary creation process and its institutions. An explosion of different monetary

innovations has recently taken place, particularly since the early 2000s, in search of economic stability and sustainability. Works from Kennedy and Lietaer (2004), Bonde (2004), Blanc (2011), Schroeder (2011), Slay (2011), Martignoni (2012), Bindewald et al. (2013), Seyfang and Longhurst (2013), and Dupré et al. (2015) are evidence of this monetary diversification in recent years (see Tichit et al. 2018). Nevertheless, despite its relevance in terms of economic resilience and efficiency, monetary diversity faces the challenge of its legal recognition. In addition, the so-called digital revolution is influencing present dynamics by dematerializing legal money and bringing new forms of monetary creation, such as virtual currencies that are challenging existing institutional frameworks.

The Legal Recognition of Complementary Local Currencies in France for the Social and Solidarity Economy

CCs based on ethical, social, and ecological principles can improve community relations, environmental protection, social well-being, and greater economic stability (SEE law, memorandum). In France, they have been developing at the local level within the context of the social and solidarity economy (SSE). SSE is a concept that encompasses various economic activities that share a common understanding based on social relations (MEAC, 2016), including the culture and the environment (Sahakian, 2014). When enforced by law, SSE can be seen as a regulatory measure to correct the market failures in areas unprofitable for business (Kalinowski, 2014).

France became the first country in the world to recognize complementary local currencies (CLMs) through the promulgation of the law of 31 July 2014 on the SSE. Article 16 of the SSE law provides a legal basis for CLMs and recognizes them as payment securities, when two conditions are satisfied: a) they are issued by recognized SSE stakeholders and; b) are in compliance with the legal framework laid down by the Financial and monetary code (FMC). Additionally, CLMs are also to be indexed to the euro and convertible only from euro to CLMs, but not from CLM to euro (MEAC, 2016). Nonetheless, the autonomous existence of CLMs in parallel to the euro can be questioned for contravening their fundamental principle of sovereignty (Tichit et al., 2018).

CLMs in France are recognized within a delimited area and are intended to promote the economic development of French territories and revitalize the local economies (MEAC, 2016). Nevertheless, it should be noted that CLMs in France started to work prior to the promulgation of the SSE law on the basis of considerations already stated in the FMC, such as the private payment services of business loyalty models. This implied, and continuous to imply, two considerations: 1) the use of CLMs within a determined network of users and; 2) that they are not considered as payment services in the same manner as bank tenders, credit companies, currency exchange offices, etc. (MLCC, 2011).

Indeed, on the one hand, article L521-3.I of the FMC states that a company “may provide payment services based on means of payment that are accepted, for the acquisition of goods or services, only on the premises of that company or, under a commercial agreement with it, in a limited network of persons accepting such means of payment or for a limited range of goods or services.” On the other hand, in terms of the article L314-1.III of the FMC, in order not to be considered as one of the payment services mentioned before, CLMs must have the character of a “service voucher” or “paper service title.”

This is the reasoning in which the local currency of Toulouse “SOL Violette” was created in 2009. Originally, the project got the financial support from the local government and its legality was lately confirmed by the Prudential Control Authority of the Bank of France (ACPR) in compliance with those legal provisions. Its acceptance and admissibility by local authorities was also confirmed later prior to the approval of the Treasurer General Paymaster of the Midi-Pyrénées Region (MLCC, 2011).

In view of the above, SEE law can be seen as a regulatory mechanism that brings a legal basis to CLMs (article 16 SSE law) by recognizing the term explicitly and regulating the stakeholders that can issue and manage this type of currency. In particular, article 1 of the SSE law recognizes as authorized issuers the private legal persons in the form of cooperatives, mutuals or unions governed by the Mutual Code, mutual insurance companies governed by the Insurance Code, foundations or associations governed by the law of 1 July 1901, or social enterprises with social utility.

For Kalinowski (2014), CLMs can also be seen as a tool for tackling some specific local and territorial issues, thus expanding a continuum of public instruments to address particular social and environmental concerns in the same way that taxation, bonus-malus, or exemptions do. Moreover, the author argues that this type of currency can be better implemented in already established networks ready to welcome them, thus increasing their possibility of success (Kalinowski, 2014). From this perspective, it can be considered that CLMs combined with ethical, social, and ecological principles, can improve not only community relations and environmental protection, but also promote sustainable economic development integrally.

Furthermore, the technological progress also transforms the social dynamics and makes the existing monetary legal frameworks evolve. For instance, CLMs in their electronic version are subject to the rules applicable to electronic money, which differ from virtual currencies analyzed lately in this paper. According to article L315-1 of the FMC, electronic money is considered as “a monetary value that is stored in electronic form, including magnetic, representing a claim on the issuer, that is issued against the delivery of funds for payment transactions [...] and that is accepted by a natural or legal person other than the issuer of electronic money”. Nevertheless, the dematerialization of money also brings the implementation of more concrete measures, as for instance, complying with the banking law rules and requirements. In such a context, article L525-6 of the FMC states that CLMs in electronic form require approval from the ACPR, when the total value of electronic money exceeds one million euros.

The use of CLMs in their electronic form certainly has advantages when it comes to their use. For example, they can make it possible to better meet the specific needs of the network, guarantee the traceability of CLMs, accurately measure the speed of circulation and flows of exchanges, as well as better evaluate the legitimacy of CLMs (Martin, 2018). This is the case of the Eusko currency from the Basque Country, which became the first electronic CLM in 2017. Nonetheless, the geographical areas in which is being used, as well as its autonomous existence against the euro (as is the case of all CLMs) remain a point of debate (Tichit et al., 2018).

On the one hand, the purpose of CLMs is, in effect, to favor “local” economic development. Yet, the French law only refers to the term “limited network of persons” in which CLMs can be used, without specifying further on its meaning. The geographical territory as a local network in which CLMs can circulate is indeed not considered expressly in the law. Notwithstanding, articles L525-3 to L525-6 of the CMF state that the term “limited network of persons” is left to the consideration of the ACPR when two conditions are satisfied: a) in the case of electronic money and b) when the amount of money is higher than one million euros.

The regional use of Eusko in the Basque Country territory led the ACPR to interpret and link the terms “local” and “limited network of persons.” In this case, the ACPR considered that the Basque Country as territory is considered itself a “limited network of persons,” thus allowing Eusko to circulate freely within the Basque territory in that regard (Martin, 2018). This can be considered positively as it gives the freedom of adapting the network according to its acceptance. Nevertheless, in order to promote local exchanges and resilience, there is a need to establish a meaning/limit regarding the extent to which a currency can be considered local or regional.

On the other hand, the indexation of CLMs to euro currency aims at conferring a certain level of monetary stability and guarantee of use (MEAC, 2016). Yet, it should be considered that the euro, as well as any other centralized fiduciary currency, is affected by inflation and economic fluctuations that directly impact its value. In effect, backing CLMs in euros is perceived as a link used to prevent users from evading payment of VTA in commercial transactions. However, taxing community exchanges can also result in a clash between the market economy and the cooperative economy that seeks to promote SSE.

A possible solution could be to back CLMs alternatively, which could help to avoid inflation and economic fluctuations, as well as reconcile SSE and community exchanges. Likewise, governments could collect a part of the taxes directly in CLMs to promote the sovereignty of this type of monetary systems against the euro. At the same time, this could be seen as a complementary mean within the official institutional framework to promote the development of areas of general interest (see Lietaer et al. 2012).

Presently, there are more than 50 local currencies in France and their expansion in some European countries is happening at a relatively similar rate: 60 in Germany and 70 in Spain and Greece (Martin, 2018). Around the world, at least until 2015, there were more than 5000 CLMs, including the Palmas of Fortaleza in Brazil and the Bristol Pounds in England in which the Mayor of Bristol is partly paid (MLETR, 2015). Nevertheless, the increasing number of CCs and modalities in which they are being implemented keeps raising questions for monetary and public authorities.

In France, only those currencies with social and environmental purposes at the local level have been included in the legislation as legal tender. Indeed, the local, social, and environmental approach of CLMs seems to be tolerated as they address areas that do not compromise the existing monetary framework (MEAC, 2016). Yet, many other monetary creations are still waiting to be legally treated. The cross-border expansion of these projects, especially within the internet age, is giving rise to new debates on the legality and legitimacy of other types of monetary innovations (Kalinowski, 2014), such as the so-called crypto/virtual currencies/assets.

The Controversial Nature and Impact of Crypto/Virtual Currencies/Assets on the Real World

Virtual currencies have experienced a boom in recent years, in particular after the emergence of Bitcoin in 2009. Some projects seem to be working (see the site coinmarketcap.com), others have failed (see Tichit et al., 2018), and other innovations are in process, as for instance the virtual currency and digital financial system proposed by Facebook (see libra.org). Notwithstanding, social dynamics, boosted by technological progress, are overcoming the positive monetary legal framework and virtual currencies are being used in cross-border networks (Perrin, 2019).

Crypto/virtual currencies/assets are digital objects based on computer networks in which transactions are validated between two or more persons, thanks to a technology called “blockchain” (INC, 2019). The blockchain works as a system where information is stored and transferred in a transparent and secure manner, without the need of a central control body (MEAC, 2016). Moreover, they are secured by private keys that allow opening a digital portfolio where crypto-units are

stored and can be exchanged for legal money. Finally yet importantly, even when no one is obliged to accept crypto-currencies as a means of payment (INC, 2019), in practice, they are used within the market to pay real and virtual goods and services (Perrin, 2019).

The last two points are raising concerns for public authorities, as crypto-currencies can be exchanged for legal money and used within the real economy, thus posing issues in terms of taxation (Tichit et al., 2018). This has motivated some governments, like that of Germany in 2013 and that of Japan in 2017, to recognize Bitcoin as a private currency, thus being able to tax transactions made with such a type of virtual currency (Tichit et al., 2018).

Virtual currencies must not be confused with electronic money, since the legal considerations provided for that purpose do not allow them to be defined as such. Indeed, according to the Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions, electronic money is considered only as a “dematerialized version of legal currencies.” This means, in terms of article L315-1 of the French FMC, that the legal nature of electronic money does not change as such, but only the manner in which it is presented as “a monetary value stored in electronic form, including magnetic.”

Before a legal definition was stated, the 2012 report of the European Central Bank (ECB) already pronounced itself considering virtual currencies as “a type of unregulated, digital money, which is issued and usually controlled by its developers and used and accepted among the members of a specific virtual community” (P. 13). Certainly, crypto-currencies, as for instance, Bitcoin, are controlled directly by individuals, without the need of intermediaries (such as banking or financial institutions) in order to carry out transactions (INC, 2019 & MEAC, 2016).

The legal definition of crypto/virtual currencies/assets was first stated in the Directive (EU) 2018/843 of 30 May 2018 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing. The transposition of this Directive into the French framework is done through the law n°

2019-486 of 22 May 2019 (PACTE law) on the growth and transformation of enterprises (article 86 on article L.54-10-1 FMC). Under both legal instruments, such types of currencies/assets are considered as a: “digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored and traded electronically.”

In addition, the EU Directive 2018/843 of 30 May 2018 also states the definition of “custodian wallet provider” as “an entity that provides services to safeguard private cryptographic keys on behalf of its customers, to hold, store and transfer virtual currencies” (article 1 on the amendments to Directive (EU) 2015/849). The fact that they are not issued by any authorized banking institution, as well as that their acceptance as payment security is not granted by law, makes it impossible to consider them as legal tender (Perrin, 2019), at least from an institutional point of view.

In fact, legal currencies, such as the euro are protected by law, and the issuance of adverse securities tending to replace them is penalized by the State. Article L.111-1 of the FMC states that “the currency of France is the euro” and article 1343-3 of the Civil Code ensures that the payment of any obligation must be made in euros, or in a foreign currency when the obligation is subject of an international transaction or judgment. In turn, article L442-4 of the Criminal Code provides that “the circulation of any unauthorized monetary sign intended to replace money or banknotes, which are legal tender in France, shall be punishable by five years of imprisonment and a fine of 75,000 euros”. Similarly, article R642-3 of the Criminal Code also provides that “the refusal to receive coins or banknotes which are legal tender in France, according to the value for which they are valid, shall be punishable by a fine.” The contested nature of some virtual currencies (as for instance Bitcoin), contravenes the above-mentioned provisions and makes it not possible to consider them as legal money. Yet, their social acceptance and practical use seems to prevail over such considerations.

In the same manner, the contentious nature of virtual currencies does not allow them to be considered

either as CCs. Indeed, even when no legal definition has been stated, CCs are considered, in general, as a sort of exchange media operating in networks in complement to the legal currency (Lietaer et al., 2012). The SSE law in France takes into account those elements to provide a legal basis to CCs at the local level (CLMs), thus considering them as legal tender working in parallel to the national currency (euro). Virtual currencies do not adhere to those principles and therefore cannot be considered as complementary mechanisms. Even so, the legal nature of virtual currencies is challenged by its social acceptance and practical use as a means of payment, which transcends the geographical borders of countries and can situate them as currencies of global use (*see coinmap.org*).

In effect, virtual currencies show power in fact, not in law, and the absence of their recognition as legal tender does not exclude their qualification as exchange media or means of payment. The sociological and not institutional approach, which defines money above all as a social consensus, is what seems to support to this type of currencies (Perrin, 2019). This has led several authors to define virtual currencies as “contractual currencies,” where the security granted by the State, justifying the legal tender, is exchanged for a consensual agreement granted by a technical security called blockchain (*see Huet, 2017*).

The position adopted by the European Court of Justice (ECJ) in its judgment of 22 October 2015, No. 264/14, *Skatteverket v. David Hedqvist* also reflects a pragmatic approach considering Bitcoin as “analogous to other convertible currencies as regards their use in the real world [and allowing] both real and virtual goods and services to be purchased.” The fact that virtual currencies are socially accepted as means of payment, thus having an impact on the real economy and world, obliges governments to adapt their legislation to regulate their use within their national territories.

The PACTE law in France is an example of the adaptation of the national legal framework to regulate the use of an emerging ecosystem of virtual currencies. Nevertheless, the evolutionary nature of crypto-currencies to expand into other areas (*e.g.*, in terms of financing, insurance means or commodities themselves) makes it necessary to consider the adaptability of the legal

framework beyond their conception as simple means of exchange or payment (INC, 2019).

The Evolutionary Framework of Blockchain in the French System as Regulatory Measure of Virtual Currencies

As previously stated, the ecosystem of crypto-currencies developed and evolved rapidly after the emergence of Bitcoin. Due to its technical character, French legislation seems to focus more on the regulation of blockchain as a technology, rather than on the proper recognition of crypto-currencies as legal money.

Ordinance No. 2016-520 of 28 April 2016 on savings bonds, for instance, was the first legal instrument to recognize and also define the blockchain technology as a “shared electronic recording device.” It updates the legal regime on saving bonds and allows the development of intermediation on participatory financing platforms, with the creation of the new category of minibons based on blockchain (MEAC, 2016). Article L. 223-12 of the FMC provides that “[...] the issuance and transfer of minibons may be recorded in a shared electronic recording device allowing the authentication of these operations [...]”. Additionally, this document brought the promulgation of two other blockchain-related legal tools. The first one is the Ordinance n°2017-1674 of 8 December 2017 on the use of a shared electronic recording device for the representation and transmission of financial securities. The second one refers to the Council of State Decree No. 2018-1226 of 24 December 2018 on the use of a shared electronic recording device for the representation and transmission of financial securities and for the issue and transfer of minibons. These legal provisions are the first bases on the specificities and conditions of the use of blockchain technology in France (MEAC, 2016). Yet, they do not make reference to virtual currencies as such.

Ordinance No. 2016-1635 of 1 December 2016 strengthening the French system to combat money laundering and terrorist financing, came later to indirectly recognize virtual currencies and regulate traders established in France as subjects to the anti-money laundering and counter-terrorist financing system (AML/CFT). Article L. 561-2-7°bis of the FMC defines the professionals involved in this sector as “any person who, as a regular profession, either acts as a counterparty or as

an intermediary for the purpose of acquiring or selling any instrument containing in digital form non-monetary value units, which may be retained or transferred for the purpose of acquiring a good or service, but does not represent a receivable from the issuer.” The implicit recognition of virtual currencies under this legal instrument was nonetheless not subject to any approval procedure, nor to the supervision of any regulating authority (Rapport TRACFIN, 2016), as may be the case for CLMs in French legislation.

Notwithstanding, law No. 2019-486 of 22 May 2019 (PACTE law) partially rectifies previous omissions and recognizes the existence of crypto-currencies, as well as the need of State intervention in their functioning. Article 86 of the PACTE law recognizes the term “digital assets” (excluding financial instruments), comprising tokens issued by Initial Coin Offering (ICOs) and virtual currencies, within the sense of the European framework. This means recognizing virtual currencies in terms of the Directive (EU) 2018/843 of 30 May 2018 previously cited. It also provides that suppliers of digital asset services (PSANs) may be authorized and placed under the supervision of the Financial markets authority (AMF) on an optional basis, and mandatorily when wishing to carry out the activity of holding digital assets on behalf of third parties or purchasing/selling digital assets against legal tender (AMF, 2019). Consequently, PACTE law comes to expand the regulation of blockchain technology in its modality of virtual currencies, as “digital representations of value” that can serve as a means of payment for the purchase of goods and services, and that have an impact on the real world and the economy. It also contributes to the recognition of an emerging monetary ecosystem taking place in the virtual realm.

Indeed, the technical nature of virtual currencies linked to the blockchain makes the French regulatory framework focus specifically on this technical aspect. Yet, the evolutionary nature of crypto-currencies, as financial instruments, insurance, or commodities themselves, makes it essential to question to what extent it is necessary to regulate crypto-assets as a means of exchange or payment. Positions with regard to the legal nature of virtual currencies, either jurisprudential or institutional, in both French and international systems, reflect a pragmatic approach linked to their use. Perrin (2019) argues that the process of the legal qualification

of crypto-assets must be reversed in order to first define the specific use of a crypto-asset in a given situation, and secondly, to determine by analogy the applicable legal regime linked to that use. This implies adhering to the doctrine of legal pragmatism, prioritizing the use given to digital assets in a specific context, in light of their evolving nature that gives rise to the provision of other types of services.

Given the cross-border nature of the internet, monetary and public authorities at the national, regional and international level, have warned users about the possible risks linked to the use of crypto-currencies (OECD, 2018). In France, the National Consumer Institute (INC, 2019) warned about several situations including (a) a very volatile price that can generate potential financial losses; (b) the risk of loss of investment if the blockchain is destroyed or if an ICO project does not succeed; (c) the lack of supervision by a control authority that can guarantee the legality of their use; (d) the possibility of being victim of fraudulent ICOs; (e) the risk of liquidity issues from PSANs; (f) money laundering, terrorist financing and criminal activities linked to the anonymous nature of transactions; (g) the high environmental impact of transactions (in December 2017 one transaction required 215 kWh) and finally; (h) the fact that no one can ensure that funds can be recovered.

Articles 26 and 26 bis of the PACTE law comes to tackle some of those concerns by giving the possibility to consult the AMF list of scam sites related to crypto-assets, as well as obtain permission for ICOs delivering in order to avoid scam projects. In a complementary manner, AMF also recommends not investing more than 5% of personal assets (INC, 2019).

Monetary creation enhanced by technology is clearly forcing authorities to regulate the use of crypto-currencies. However, there are still outstanding issues to be addressed in relation to their financial use, speculation, and lack of consideration of social and environmental externalities. Considering these aspects can favor the development of a more stable economic environment, while the integration of environmental externalities in the design of crypto-assets can contribute to reducing their environmental impact. Similarly, there is a need for international regulation that considers a pragmatic approach in light of the cross-border and evolving nature of crypto-assets that give rise to the provision of

new services. This also implies understanding technical aspects (blockchain) that change the forms and not the substance of these services.

In addition, the regulation of crypto-assets may evolve to recognize the existence of a monetary ecosystem that differs in substance from legal money (considering, for instance, a sociological approach). This includes respect for the sovereignty and democracy of virtual currencies, while establishing rights and obligations for all stakeholders, including governments (*e.g.*, in terms of traceability, transparency, user protection, and state supervision). Finally, moving toward the promotion and regulation of a digital monetary ecosystem based on ethical, social, and environmental principles within a real economy (*e.g.*, the case of CLMs in the French system), may be a more useful tool in search of integral sustainable economic development.

Conclusion

Monetary diversification is an incontestable fact that is changing traditional paradigms, such as bank-debt based currency creation. This emerging monetary ecosystem is taking place in both the classic (paper and electronic money) and the digital world (through innovative technologies such as the blockchain giving rise to virtual currencies).

A monetary ecosystem implies creating diversity in terms of means of exchange and types of issuing institutions, including the government. Based on the functioning of all natural systems, it is argued that increasing diversity in a given economy, from a single currency monopoly to a monetary ecosystem of parallel currencies, can result in greater economic stability. Moreover, moving toward the implementation of monetary ecosystems based on ethical, social, and environmental principles, within a real economy, can also promote social well-being and sustainable economies.

Regulating this monetary diversification may be a viable option to face some of the great challenges of our times, including the recurring financial and monetary crises, which point to the fact that our monetary system also faces its own limits.

On the one hand, France is the first country in the world to recognize the existence of a monetary ecosystem, through the promulgation of Law n° 2014-856 of

31 July 2014 on SSE that gives legal bases for CLMs. These types of currencies are recognized in law as legal tender. They are indexed to the euro and aim at promoting the economic development of French territories by revitalizing the local economy between citizen-consumers and local traders and producers. Nevertheless, it is worth noting that CLMs existed and circulated before the enactment of the SSE law. Initially, CLMs were legally inspired by the provisions for private payment services of business loyalty models and began to circulate in the form of private currencies within specific networks of users and territories. The SSE law comes to regulate their functioning and modalities by recognizing the entities authorized to issue CLMs, as well as the formats in which they can be implemented. The geographical areas in which they can circulate, as well as their autonomous existence in parallel to the euro, are nonetheless points for improvement for the promotion of local resilience and sovereignty.

Indeed, legislation limits the spatial implementation of CLMs to a “limited network of persons” without going further into the meaning. This can be considered positively as it gives freedom of adapting the network according to the acceptance of CLMs, thus favoring local exchanges and promoting the economic development of French territories. Yet, the ambiguity of this concept raises questions with regard to the extent to which CLMs can be considered for local use. The case of the Basque country and its local currency, the Eusko, shows that the use of a CLM can expand from the local to the regional level, when the number of people who make up the given network accept the use of such a currency as a means of exchange. This favors the idea that these are more “private currencies” rather than “local currencies.” As a consequence, in order to promote local exchanges and resilience, there is a need to establish an interpretation on the meaning/limit of the term local/regional.

The indexation of CLMs to the euro also aims at conferring a certain degree of monetary stability and guarantee of use. However, the euro as well as any other centralized fiduciary currency are affected by inflation and economic fluctuations that have a direct impact on its unit value. In fact, backing CLMs in euros is a measure to prevent tax evasion in commercial transactions. Nevertheless, taxing community exchanges can also result in a clash between the market economy and the

cooperative economy (which SSE seeks to promote). Alternative backing could avoid inflation and economic fluctuations of the euro, as well as to reconcile SSE and community exchanges. Governments could also collect a part of the taxes directly in CLMs to promote their sovereignty against the euro. This could work at the same time as a complementary mechanism within the official institutional framework to promote development in areas of general interest (*see* Lietaer et al. 2012).

On the other hand, the PACTE law in France also indirectly recognizes the existence of a monetary ecosystem within the digital sphere. French law regarding crypto/virtual currencies/assets follows the essence of the European legal framework (Directive 2018/843 previously cited) as “digital representations of value” different from legal money. Nevertheless, the fact that virtual currencies are socially accepted as legal tender, thus having an impact on the real economy, obliges governments to adapt their legislation to regulate their use within their national structures. The PACTE law in France is an example of the adaptation of the national framework to regulate the use of an emerging ecosystem of virtual currencies. Yet, the evolutionary nature of crypto-currencies, as for instance, to serve as financial means, provision of insurances, or commodities themselves, makes essential to question to what extent is necessary to regulate crypto-assets as means of exchange or payment. Positions with regard to the legal nature of virtual currencies, either jurisprudential or institutional, in both French and international systems, reflect a pragmatic approach linked to their use. As pointed by Perrin (2019), the process of the legal qualification of crypto-assets could then be reversed in order first to define the specific use of a crypto-asset in a given situation, thus being able to determine by analogy the applicable legal regime according to the service provided.

Pending issues to be addressed include the use of crypto-assets as financial mechanisms, their cross-border nature on the Internet, as well as speculation and lack of consideration of social and environmental externalities. Considering these aspects can favor the development of a more stable economic environment. Moreover, in light of the impact and evolving nature of crypto-assets that function as new global services, there is also a need for international regulation considering a pragmatic approach. In general, regulation of crypto-assets could consider the recognition of a monetary

ecosystem (from a sociological perspective) that differs substantially from the institutional vision regarding the issuance and use of legal money. This may include the respect of sovereignty and democracy that characterizes the virtual currency governance model. It may also establish rights and obligations that guarantee the proper use and functioning of these types of currencies, for instance, with regard to their traceability, transparency, protection of users, and state supervision. Similarly, integrating environmental externalities in the design of crypto-assets can contribute to the reduction of their environmental impact. Last but not least, the promotion and regulation of a digital monetary ecosystem based on ethical, social, and environmental principles, within a real economy (*e.g.*, the case of CLMs in France), may be a more useful tool toward integral sustainable economic development.

In sum, the monetary ecosystem shows a tendency to keep developing further. Transforming its object into a system based on ethical, social, and environmental principles can contribute positively to sustainable economic development. Further research into this field may include the study and analysis of alternative means for backing CLMs, in order to strengthen the sovereignty and functioning model of these types of projects. It can also include the role of governments in the promotion, regulation, and collection of part of the taxes on CLMs, thus respecting the chain of issuance, use, and reinjection of the flow of these types of currency systems. Exploring a legal framework considering these dimensions may contribute to the viability and sustainability of these sorts of projects.

As far as virtual currencies are concerned, further research may consider the rights and obligations to which all interested parties may be subject to, including the governments. Analyzing these aspects can promote a more responsible virtual currency ecosystem. What is more, transforming the object and moving toward an SSE and environmental approach to promote development in areas of general interest may also be a potential line of research. This comprises the study and analysis of the integration of social and environmental externalities in the design and functioning of crypto-currencies. The analysis of monetary ecosystems considering those dimensions from a legal perspective, can contribute to favor economic stability and promote sustainable economic development integrally.

References

1. All the cryptocurrency merchants and ATMs of the world in one map. (n.d.). Retrieved on 24 August 2019, from <https://coinmap.org/>.
2. Autorité des marchés financiers (15 avril 2019). *Vers un nouveau régime pour les crypto-actifs en France*. Consulté le 29 Octobre 2019, sur <https://www.amf-france.org/Reglementation/Dossiers-thematiques/Fintech/Vers-un-nouveau-regime-pour-les-crypto-actifs-en-France>.
3. Blanc, J. (2000). *Les monnaies parallèles: Unité et diversité du fait monétaire*, Paris: L'Harmattan.
4. Calvo, S., & Morales Pachon, A. (2014). Exploring complementary currencies in Europe: a comparative study of local initiatives in Spain and the United Kingdom. Living in Minca Working Papers. Retrieved on 20 October 2019, from http://livinginminca.org/wp-content/uploads/2015/03/Complementary_Currencies.pdf.
5. Capitalisations Marché Crypto-Monnaie. (n.d.). Retrieved on 24 Août 2019, from <https://coinmarketcap.com/fr/>.
6. Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC. (OJ L 267, 10.10.2009, pp. 7–17).
7. European Central Bank. (2012). *Virtual currency schemes*. Frankfurt am Main. ISBN 978-92-899-0862-7 (online). Retrieved on 22 October 2019 from <http://www.ecb.europa.eu/pub/pdf/other/virtual-currency-schemes201210en.pdf>.
8. European Court of Justice (ECJ). Judgment of the Court (Fifth Chamber) of 22 October 2015. Skatteverket v. David Hedqvist. Case C-264/14. ECLI:EU:C:2015:718.
9. European Union. Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community. 13 December 2007. (OJ C 306, 17.12.2007, p. 1–271).
10. European Union. Treaty on European Union (Consolidated Version). Treaty of Maastricht. 7 February 1992. (OJ C 325, 24.12.2002, p. 75–76).
11. Fare, M., & Ahmed, P. O. (2018). Why Are Complementary Currency Systems Difficult to Grasp within Conventional Economics? *Interventions Économiques*, (59), 1–20. DOI: 10.4000/interventionseconomiques.3960
12. France. Code civil.
13. France. Code pénal.
14. France. Code monétaire et financier.
15. France. Conseil d'État. Décret n° 2018-1226 du 24 décembre 2018 relatif à l'utilisation d'un dispositif d'enregistrement électronique partagé pour la représentation et la transmission de titres financiers et pour l'émission et la cession de minibons. (JORF n°0298 du 26 décembre 2018).
16. France. Loi n° 2014-856 du 31 juillet 2014 relative à l'économie sociale et solidaire. (JORF n°0176 du 1 août 2014).
17. France. Loi n° 2019-486 du 22 mai 2019 relative à la croissance et la transformation des entreprises. (JORF n°0119 du 23 mai 2019).
18. France. Ordonnance n° 2016-1635 du 1er décembre 2016 renforçant le dispositif français de lutte contre le blanchiment et le financement du terrorisme. (JORF n°0280 du 2 décembre 2016).
19. France. Ordonnance n° 2016-520 du 28 avril 2016 relative aux bons de caisse. (JORF n°0101 du 29 avril 2016).
20. France. Ordonnance n° 2017-1674 du 8 décembre 2017 relative à l'utilisation d'un dispositif d'enregistrement électronique partagé pour la représentation et la transmission de titres financiers. (JORF n°0287 du 9 décembre 2017).
21. Huet, J. (2017). Le bitcoin, dont la légalité paraît admise, est une sorte de monnaie contractuelle. *Revue des contrats*. RDC 2017. N° 113v4. P. 54–56.
22. Institut National de la Consommation (24 Septembre 2019). *Les cryptoactifs: qu'est-ce que c'est?* Consulté le 28 octobre 2019, sur <https://www.inc-conso.fr/content/les-cryptoactifs-quest-ce-que-cest>.
23. Kalinowski, W. (2011). *Currency pluralism and economic stability: the Swiss experience*. Veblen Institute for Economic Reforms. Paris. 04 p. Retrieved on 22 October 2019, from http://www.socioeco.org/bdf_fiche-document-483_fr.html.
24. Kalinowski, W. (2014). *L'impact socio-économique des monnaies locales et complémentaires*. Notes de l'Institut Veblen pour les réformes économiques. Paris. 14 p. Consulté le 05 août 2019, sur http://monnaie-leman.org/wp-content/uploads/2015/10/impact_socio-economique_des_monnaies_locales_et_complementaires-2-copie.pdf.

25. Le réseau des monnaies locales complémentaires citoyennes (3 Juillet 2011). *Une monnaie locale complémentaire est-elle légale?* Consulté le 27 Octobre 2019, sur <https://monnaie-locale-complementaire-citoyenne.net/legalite-mlc/>.
26. Libra: A New Global Payment System. (n.d.). Retrieved on 24 August 2019, from <https://libra.org/en-US/>.
27. Lietaer, B., Arnsperger, C., Goerner, S., & Brunnhuber, S. (2012). *Money and Sustainability: The Missing Link*. A report from the Club of Rome - EU Chapter to Finance Watch and the World Business Academy. Triarchy Pr.
28. Martin, B. (2018). Le numérique au secours des monnaies locales et complémentaires. *Netcom*, (32-1/2), 163–182. DOI: 10.4000/netcom.3000
29. Ministère de l'action et des comptes publics (12 décembre 2017). *Tendances et analyse des risques de blanchiment de capitaux et de financement du terrorisme en 2016 [Rapport TRACFIN]*. P. 13. Consulté le 05 Août 2019, sur https://www.economie.gouv.fr/files/dp_12122017.pdf.
30. Ministère du Logement, de l'égalité du territoire et de la ruralité – MLETR. (8 Avril 2015). *Rapport de la mission d'étude « Monnaies Locales Complémentaires et les systèmes d'échanges locaux »*. Consulté le 05 Août 2019, sur http://rtes.fr/IMG/pdf/rapport_monnaies_locales_complementaires_2-2-2.pdf.
31. Ministères de l'Économie, de l'Action et des Comptes publics (2018, 04 juillet). *Crypto-monnaies, crypto-actifs... Comment s'y retrouver?* [Post sur le site en ligne]. Disponible sur <https://www.economie.gouv.fr/particuliers/cryptomonnaies-cryptoactifs> [Consulté le 05 août 2019].
32. Ministères de l'Économie, de l'Action et des Comptes publics - MEAC (26 Août 2016). *Monnaie et innovations monétaires*. Consulté le 03 Octobre 2019, sur <https://blogs.economie.gouv.fr/les-cafes-economiques-de-bercy/innovation-monnaire-enjeux/>.
33. OECD (29 October 2018). *How to deal with Bitcoin and other cryptocurrencies in the System of National Accounts?* Meeting of the Working Party on Financial Statistics. Directorate for financial and enterprise affairs statistics and data directorate. COM/SDD/DAF(2018)1.
34. Perrin, A. (2019). Le bitcoin et le droit: problématiques de qualification, enjeux de régulation. *Gestion & Finances Publiques*. 1(1). PP. 84-93. DOI: 10.3166/gfp.2019.00014.
35. Sahakian, M. (2014). Complementary currencies: what opportunities for sustainable consumption in times of crisis and beyond? *Sustainability: Science, Practice and Policy*, 10(1), 4–13. doi: 10.1080/15487733.2014.11908121
36. Tichit, A., Lafourcade, P., & Mazonod, V. (2017). Les monnaies virtuelles décentralisées sont-elles des dispositifs d'avenir? *Interventions Économiques*, (59). DOI: 10.4000/interventionseconomiques.3771