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Zurich<sup>UZH</sup>

Faculty of Law

# Central Bank Digital Currencies An Outline of Legal Issues

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## Overview

- Legal basis
- Interest rate
- Monetary policy instrument
- Avoidance of distortion of competition

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## Legal basis

### Issuance of money: a public service?

- Cash
  - Monopoly for traditional reasons
  - NBA 5 II b
- Swiss franc money market liquidity
  - Reaction to market failure (1870 etc.)
  - NBA 5 II a
- CBDC for the public
  - Today: competitive service



## Legal basis

### Issuance of CBDC for individuals: a public service?

- Market failure
  - Credit-risk free means of payments
  - Requires a legal basis; proportionality
- Significant decrease of demand for cash
  - Broad or narrow interpretation of NBA 5 II c in connection with CPIA 7 I ?
  - 1999 Message CF re CPIA: bank deposits no legal tender due to credit risk



## Legal basis

### Interim conclusion

- At present, the supply of digital means of payment is not a monopoly service, but a competitive service
- This could change, if a market failure or a collapse in the use of cash imposed the CB to offer a digital, credit-risk free means of payment as a public service
- Still, this would most probably require a legislative amendment



## Legal basis

### Conceptual work

- Organisational aspects
  - inside/outside legal entity
  - Register based/value based
  - AML rules
- Access for commercial banks
  - 100%-money
  - Segregation of assets vs BA 16 and 37d



## Interest rate

### Future

- CBDC for the public with built-in function to make it possible to accrue interest
- Instrument to overcome the zero lower bound
- Taps on the function of money as a store of value

### Past

- 1906: SNB predominantly provided liquidity for the money market
- 1914: banknotes become legal tender, smaller denominations
- 1951: serving the overall interest of the country
- 2002: price stability



## Interest rate

### Today

- Mandate to supply and distribute cash → store of value
  - Mere reflex of the task to ensure price stability?
  - Result of an implicit command to issue means of payments suitable for saving?
  - 1936: legal tender gold coins no longer issued because of hoarding risk



## Interest rate

### Interim summary

- Initially, CB was not mandated to issue means of payments for the public's every day needs
- It only assumed this function later, with the shift from commodity money to paper money
- The imperative of price stability ensures only indirectly the function of being a store of value
- SNB has not hesitated to abandon a means of payment, if «degenerated» to a mere means of saving



## Monetary policy instrument

### Desirable?

- CB micro-involvement in economy
- Fiscal measures
- Pressure on CBs

### Covered by the NBA?

- NBA 9
- Financial market participants
- Legislative change required



## Avoidance of distortion of competition

### E.g. United States Post Saving System

- Government role in the provision of public non-tangible money
- Depot limits (1913 USD 500 = USD 12'000 today)
- In order to reduce competition with commercial banks
- See e.g. Koning (2016), Fedcoin: A Central Bank-issued Cryptocurrency



Thank you.