



An Overview of the Legal and Regulatory Framework for Complementary Currencies in Belgium

Introduction

All complementary currency systems face a variety of legal and compliance issues that need to be addressed in order to operate a sustainable and successful operation. This document attempts to look at 6 key areas of law

- i. Taxation
- ii. Social Security and Employment
- iii. Financial Services, Money Laundering and Note Printing
- iv. Insurance
- v. Data Protection
- vi. Public Sector acceptance of the complementary currencies

The document will analyse how versions of the 4 generic currency models outlined below are affected by the relevant legislation.

1. LETS
2. Timebank
3. Legal Backed Tender Currency
4. Closed Loop Payment System

Disclaimer

This document only offers an overview of the legal landscape that complementary currencies operate within and nothing contained in this document should be considered legal advice.

Only the most generic systems are covered – and deviation or hybrid models may alter liability, obligations and compliance options.



This report has been produced by the New Economics Foundation as part of the Community Currencies in Action (CCIA) collaboration project.

CCIA is a transnational partnership project designing, developing and implementing community currencies across northwest Europe. The partnership provides a rigorously tested package of support structures to facilitate the development of currency initiatives across NWE, promoting them as credible policy vehicles.

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Find out more about CCIA on our website:
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LETS/SEL

1. Taxation

When discussing the taxation implications of participating in a LETS it is useful to distinguish between those who engage in the schemes to offer services in line with a person's normal line of commercial work and those engage with the schemes outside of work, more as social activity. Most LETS schemes are predominantly comprised of individuals engaged in social exchanges. In addition if the system is functioning well then the income and expenditure should balance out to zero leaving nothing to report.

For the moment there is no official statement from the Belgian authorities on whether participation within a LETS/SEL should be classed as taxable income and if it should how that income could be calculated.

If the LETS group itself is a not for profit association (legal statute vzw / asbl), which most are, the applicable taxations are the taxation of moral persons, and the taxation of the patrimony, both of which will be mostly nought.

2. Social Security and Benefits

An unemployed person may only work for his own benefit but should neither do any labour providing him with a wage or any other material advantage for him or his family. For instance, he cannot build his own house, but can repair it. Work performed on behalf of others is presumed to be remunerated, unless the person concerned is able to prove the contrary. A voluntary activity (e.g. performed on behalf of a private person or an association) can be authorized if a prior request is made. No response after 10 days is considered approval of the request.

This means that the unemployed person has to be registered as a jobseeker with the VDAB (Flemish Region), the FOREM (Walloon Region), ACTIRIS (Brussels Region) or the ADG (German speaking Community) and that the person has to accept every job considered as appropriate. This also means that the person has to seek for a job actively..

People on disability benefits must seek the special permission of the doctor of the mutual insurance association to engage in voluntary work.

Once a volunteering opportunity has been authorised then there should be no impact on benefits received provided that

- The organising entity is a not for profit organisation
- The community currency given to the volunteer does not have any cash value and is not exchangeable and is only spendable within a limited network.
- The total value for reimbursed expenses etc. Does not exceed the maximum of 32 Euro per day or 1309 Euro per year.

With specific regard to unemployment benefit legal analysis has shown that although a claimant may engage in occasional gainful activity that on the days where this happens the claimant will forfeit their benefits for that day¹. (this is the normal procedure for any unemployed, and to notify before starting activities.)

3. Financial Services, Money Laundering and Note Printing

Financial Services regulations and money laundering requirements do not apply to LETS systems.

Should the system wish to print physical notes, legally defined as vouchers, then it is important that, at a minimum, basic security features are implemented and that it is very clear that they are not interchangeable with legal tender notes.

4. Insurance

All currency projects that deal directly with the public will require public liability insurance, which covers the currency operator for any damages awarded to members of the public, volunteers or customers for injury, illness, disease or damage to their property which is sustained as a result of negligence during your business activity.

Currency operators should also consider the other liability of the board and either be aware of the risks or indemnify the board against such risks through an insurance policy.

5. Data Protection

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¹ Analyse juridique du système d'échange local (SEL) en Région wallonne, Michel Davagle et Baudouin Paternostre, 2008, 142 p., p.75

Data protection law makes provision for the regulation of the processing of information relating to individuals, including the obtaining, holding, use or disclosure of such information. Where the currency operator stores any personal information it is vital that appropriate technical measures be taken to ensure the protection of this data on and offline. It is also considered best practice to have an internal data protection policy.

Not for Profit organisations who only collect and share information with people and organisations as far as is necessary to carry out the purpose of the organisation do not need to comply with the reporting requirements under the Privacy act. There is also the obligation to provide everyone details about what information is stored. This can best be achieved through the drafting of a privacy statement.

6. Public Sector accepting CCs

In general LETS currency cannot be exchange for goods and services within the public sector

Timebanks (Banque du Temps)

Note: In Flanders the LETS-groups and Wallonia (groups SEL) mostly have 'time' as their standard of value and unit of exchange, be it that they all have different names and denominations. In that sense these groups can be considered to be a sort of time banks.

1. Taxation

Since most timebanks operate between individuals the issue of corporation tax does not raise any concerns.

From an institutional perspective provided the organising body does not generate profit the consideration of corporation tax will not apply. Where the timebank is being run for profit and the time credits have a monetary value corporation tax will need to be considered.

One ruling by the tax authorities have come out in favour of VAT not applying to services delivered through one of the major Timebanks when they stated that they should be considered as if they were services delivered at no cost. This is a particularly interesting ruling since the Timebank that this opinion refers to operates not just between individuals but also between businesses. Operators will want to be cautious about assuming the application fo this ruling to their system and should always ensure that good legal advice is obtained.

For the moment there is no official statement from the Belgian authorities on whether participation within non-convertible complementary currency systems (which all Timebanks are) should be classed as taxable income and if it should how that income could be calculated. For more detail please refer to the LETS section.

2. Social Security and Benefits

An unemployed person may only work for his own benefit but should neither do any labour providing him with a wage or any other material advantage for him or his family. For instance, he cannot build his own house, but can repair it. Work performed on behalf of others is presumed to be remunerated, unless the person concerned is able to prove the contrary. A voluntary activity (e.g. performed on behalf of a private person or an association) can be authorized if a prior request is made. No response after 10 days is considered approval of the request.

This means that the unemployed person has to be registered as a jobseeker with the VDAB (Flemish Region), the FOREM (Walloon Region), ACTIRIS (Brussels

Region) or the ADG (German speaking Community) and that the person has to accept every job considered as appropriate. This also means that the person has to seek for a job actively.

People on disability benefits must seek the special permission of a the doctor of the mutual insurance association to engage in voluntary work.

Once a volunteering opportunity has been authorised then there should be no impact on benefits received provided that

The organising entity is a not for profit organisation

- The community currency given to the volunteer does not have any cash value and is not exchangeable and is only spendable within a limited network.
- The total value for reimbursed expenses etc. Does not exceed the maximum of 32 Euro per day or 1309 Euro per year.

3. Financial Services , Money Laundering and Note Printing

Where a timebank issues physical notes they are issued in the legal form of a voucher which is different from that of a legal tender banknote. The voucher represents a promise to accept it in exchange for goods and services from specified supplier(s) and cannot be redeemed for cash. The precise nature of the paper vouchers will typically be governed by the terms and conditions to which users have subscribed and should make clear the status of the vouchers and the restrictions on their convertibility with the Euro.

It is also important to ensure that appropriate safeguards (holograms, watermarks etc.) are taken to ensure that the vouchers are hard to counterfeit.

Where the time credits are issued electronically there is a small potential that the e-money directive may apply. However this would only be the case if they 'could be issued on the receipt of funds' and would have to be convertible back into national currency.

4. Insurance

All currency projects that deal directly with the public will require public liability insurance, which covers the currency operator for any damages awarded to

members of the public, volunteers or customers for injury, illness, disease or damage to their property which is sustained as a result of negligence during your business activity. Recommended but not compulsory.

Currency operators should also consider the other liability of the board and either be aware of the risks or indemnify the board against such risks through an insurance policy.

5. Data Protection

Data protection law makes provision for the regulation of the processing of information relating to individuals, including the obtaining, holding, use or disclosure of such information. Where the currency operator stores any personal information it is vital that appropriate technical measures be taken to ensure the protection of this data on and offline. It is also considered best practice to have an internal data protection policy.

Not for Profit organisations who only collect and share information with people and organisations as far as is necessary to carry out the purpose of the organisation do not need to comply with the reporting requirements under the Privacy act. There is also the obligation to provide everyone details about what information is stored. This can best be achieved through the drafting of a privacy statement.

6. Public Sector Acceptance of CCs

There is no evidence of timebank currencies being accepted for public services.

Legal Tender Backed Currency

1. Taxation

Legal backed tender currencies are classed as a vouchers for tax purposes, since they are sold at face value and redeemed for real goods and services. Credit vouchers are defined as vouchers that are issued by a person who cannot themselves redeem them for goods or services. Instead the issuer undertakes to give complete, or partial, reimbursement to whoever does redeem the voucher.

With regard to **VAT**, it is not due on the actual sale of the vouchers since they are sold at face value, but there is VAT due from the businesses that redeem these vouchers. When the vouchers are used/redeemed for goods and services, the value for VAT purposes is the full face value amount. To encourage compliance with VAT law, all legal backed tender currency operators should notify businesses who accept the currency that VAT is due as normal on all goods and services they sell, including those sold for complementary currencies.

Transaction between individuals not engaged in professional activity do not attract VAT requirements, except if one individual is engaged in the provision of economical services or activities on a very regular basis. This condition will be examined case by case by the fiscal administration.

With regard to **Corporation tax**, the operating entity, will be responsible for paying all required corporation taxes, just like any other company. It is considered good practice to notify all limited companies and other organisations including clubs, societies, associations and other unincorporated bodies who accept the currency that they must pay corporation tax on their income whether it is in complementary currency or in Euro. This also applies to self-employed people and business partnerships.

With regard to **Income tax**, for businesses that accept legal backed tender currencies, there are two types of income tax considerations: tax paid by businesses on workers' salaries, and self-employment tax paid by sole traders and business partnerships. Although the exact classification under the law may be under debate the fact that tax is due on any salary earned in legal backed tender currency is not. For those who are self-employed all income must be reported to the tax authorities, regardless of whether this income was earned in Euro or in any other currency.

It is very important to note that all of these tax payments need to be made in legal tender and cannot be completed in the complementary currency

The law forbids an employer to pay its employees' salary in legal backed tender currencies, even if the employees agrees to it. It is however possible to offer the employee an extra sum over and above their normal salary in complementary currency. The provision of an extra amount exceeding the salary agreed upon in work contract, It will be taxed as salary. It is also possible to provide the employer's annual gift in complementary currency if the complementary currency voucher is issued with a limited validity date. The limits are up to 35€ per year per employee, with and 35 extra € per employee's child per year. This advantage must be offered to all employees, is deductible and tax exempted.

2. Welfare and Employment

There is at present no specific legal statement on how welfare benefits should be managed with regard to the remuneration in complementary currencies.

Individuals receiving legal backed tender currencies in exchange for performing work will count as earnings and could therefore have an impact on any benefits they receive. Therefore, it is vital the recipients are made aware that all such currencies are a source of income and must be declared.

Therefore anyone receiving legal backed tender currencies on a regular basis whilst in a voluntary capacity needs to be aware this payment could be treated as notional earnings and impact any benefits they receive.

One-off gifts in local currency will probably not affect any benefits nor be described as payment for work.

3. Financial Services Law

The current legislation in the Belgium states that only the Central bank is able to print banknotes; therefore, those wishing to print legal backed tender currencies have to do so as vouchers as stated above. All such vouchers should ideally have an expiry date printed on them. They should, ideally, also clearly be labelled as vouchers to avoid any possible confusion.

It is important to mention that the activity associated with receiving Euros in exchange for a complementary currency and the management of those funds may be classed as payment operations requiring a licensed entity to perform them according to the payment means Directive (PSD).

A currency operator that wishing to issue electronic money may be caught within the scope of the E-Money directive (EMD). In order to be within the scope of the legislation the issuance of the complementary currency needs to be done upon receipt of national currency and the users of the currency must be able to reconvert the complementary currency into national currency.

Once the assessment has been made that compliance with either the PSD or the EMD is required then there are 3 ways to meet the requirements.

a.i.1.a. Register as a E-money Issuer or Payment Service Institution

a.i.1.b. Partner with an organisation (eg local Bank) that is already registered

a.i.1.c. Use the limited network exemption

The payment means Directive (PSD) does not apply to services based on instruments that can be used to acquire goods or services under a commercial agreement with the issuer within a limited network of service providers. The Belgian National Bank, in charge of controlling law compliance has already ruled positively on that matter regarding a Belgian legal tender backed complementary currency.

In a similar way, the EMD does not apply to monetary value stored on specific pre-paid instruments, designed to address precise needs that can be used only in a limited way, because they allow the electronic money holder to purchase goods within a limited network of service providers under direct commercial agreement with a professional issuer. Again, there is no definition of what a limited network is, the Belgian National Bank is in charge of ruling on this exception upon request, case by case.

In order to combat money laundering it is vital that there is a strong 'know your customer' system is in operation and that all suspicious activity is reported in a timely manner to the relevant authorities. Since Jan 2014, payments in cash for more than 3000€ are not allowed in Belgium. If the price of the service or good is above 3000€, only 10% of the price can be paid in cash. For electronic accounts it is vital that the customer are properly identified using appropriate documentation when opening an account. It is then also important to ensure that the correct triggers are put in place to inform authorities of suspicious online transactions.

4. Insurance

All currency projects will require public liability insurance, which covers the currency operator for any damages awarded to members of the public, volunteers or customers for injury, illness, disease or damage to their property which is sustained as a result of negligence during your business activity.

Currency operators should also consider the other liability of the board and either be aware of the risks or indemnify the board against such risks through an insurance policy.

5. Data Protection

Data protection law makes provision for the regulation of the processing of information relating to individuals, including the obtaining, holding, use or disclosure of such information. Where the currency operator stores any personal information it is vital that appropriate technical measures be taken to ensure the protection of this data on and offline. It is also considered best practice to have an internal data protection policy.

6. Public Sector Acceptance of CCs

In the Belgium there are currently no examples of public authorities accepting legal backed tender currencies for municipal services and taxes.

Closed loop Payment systems

1. Taxation

Under the standard model these currency systems specify a peg for the newly created currency usually to national legal tender.

All transactions within the system are considered part of the normal economy and there VAT should be charged on all transactions at the applicable level. Similarly all trade done through these systems should be counted as income for the purpose of corporation tax reporting. If a self-employed person engages in trade within a closed loop system then it should be included in their tax declaration.

2. Social Security and Employment

These systems are focused on facilitating trade between businesses and so concerns about social security implications should not be affected.

The law forbids an employer to pay its employees' salary in legal backed tender currencies, even if the employees agrees to it. It is however possible to offer the employee an extra sum over and above their normal salary in complementary currency. The provision of an extra amount exceeding the salary agreed upon in work contract, It will be taxed as salary. It is also possible to provide the employer's annual gift in complementary currency if the complementary currency voucher is issued with a limited validity date. The limits are up to 35€ per year per employee, with and 35 extra € per employee's child per year. This advantage must be offered to all employees, is deductible and tax exempted.

3. Financial Services

These systems do not normally come under most financial services regulation since the currencies are non-convertible into national currencies, one cannot buy into the system, but instead must trade to participate and generally do not produce any paper notes.

The one are of concern for operators is to ensure that the system is not used for money laundering. It is therefore vital that appropriate safeguards and policies are put in place.

4. Insurance

All currency projects will require public liability insurance, which covers the currency operator for any damages awarded to members of the public,

volunteers or customers for injury, illness, disease or damage to their property which is sustained as a result of negligence during your business activity.

Currency operators should also consider the other liability of the board and either be aware of the risks or indemnify the board against such risks through an insurance policy.

Since insurance companies are likely to be unfamiliar with complementary currencies it is likely that they will require additional detail in order to be able to accurately calculate the risk and provide an accurate quote.

5. Data Protection

Data protection law makes provision for the regulation of the processing of information relating to individuals, including the obtaining, holding, use or disclosure of such information. Where the currency operator stores any personal information it is vital that appropriate technical measures be taken to ensure the protection of this data on and offline. It is also considered best practice to have an internal data protection policy.

Not for Profit organisations who only collect and share information with people and organisations as far as is necessary to carry out the purpose of the organisation do not need to register under the data protection act. This this is true for any organization, not just the non profit

6. Public Sector Acceptance of CCs

Public sector goods and services do not normally form part of these kinds of systems