

# PETERKA PARTNERS

THE CEE LAW FIRM

## Cryptocurrency, a reality to still be further regulated by lawmakers

Cryptocurrency has become a hot topic and the need to regulate it has never been more important. We are constantly monitoring the changes in national and European legislations, as well as the practice of the courts, in order to understand fully the extent of the obligations surrounding cryptocurrency. In this sense, we are constantly adapting in order to provide our clients with the best legal services so that they can be protected while carrying on with their daily business in the digital age.

**In 2008, a person, or persons, operating under the pseudonym Satoshi Nakamoto developed bitcoin, the first cryptocurrency, and devised the first blockchain database.** In 2009, this currency began to be used; released as open-source software. It acts as a decentralized digital currency, without a central bank or single administrator, that can be sent from user to user on the peer-to-peer bitcoin network without the need for intermediaries.

Unbeknownst to most people, **this was about to start a technological revolution, which more than 10 years later still raises a great deal of questions and concerns**, including from governments and regulatory authorities, as thousands of different cryptocurrencies have since been developed.

Cryptocurrencies transitioned in a very short timeframe from mostly being used in illegal transactions to blockchain, serving as a public financial transaction database and possibly reframing monetary systems, as countries around the world are analysing the possibility of using blockchain for issuing currency.

Moreover, **the utility of blockchain technology is virtually limitless**, as it has started to be applied even in areas traditionally seen as eminently analogue, such as art. In this respect, lately there have been many discussions regarding non-fungible tokens (NFTs), which are special types of cryptographic tokens which represent something unique, not being mutually interchangeable. This is in contrast to cryptocurrencies like bitcoin, and many network or utility tokens that are fungible in nature. The main applications for NFTs are crypto art, digital collectibles, and online gaming. For example, the most expensive NFT currently on the market is CryptoPunk #6965, which was sold on 19 February 2021 for 800 ETH (currently worth USD 1,608,032).

Consequently, **most governments were not prepared for the impact of such cryptocurrencies**, therefore many transactions involving them did not fall under any regulation, which led to much unpredictability and insecurity. Moreover, authorities were not able to include cryptocurrency transactions in any tax category and even requested commercial banks to close all accounts used for such transactions. For example, in its capacity of supervising authority, **the National Bank of Romania (NBR) discouraged any involvement of credit institutions in relation to virtual currencies**, including the provision of services for entities that offer investment or transaction services of such currencies, in order for the credit institutions to avoid any reputational risk. As a result, many

# PETERKA PARTNERS

THE CEE LAW FIRM

Romanian commercial banks terminated their agreements with clients involved in virtual currency businesses.

As a generally accepted definition, **a cryptocurrency is a digital asset designed to work as a medium of exchange** wherein individual coin ownership records are stored in a ledger existing in a form of computerized database using strong cryptography to secure transaction records, to control the creation of additional coins, and to verify the transfer of coin ownership.

Another definition was provided by the European Central Bank (ECB), according to which a cryptocurrency is *a digital representation of value, not issued by a central bank, credit institution or e-money institution, which, in some circumstances, can be used as an alternative to money.*

Also, Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 defined a virtual currency 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.*

However, **few countries have defined cryptocurrencies in their national legislations. They are mainly regarded though as not being traditional currencies or even means of payments.** For instance, the NBR stated that virtual currency (referring to cryptocurrency) is not a national or foreign currency, nor an electronic currency in the meaning of Law no. 127/2011, and its acceptance as means of payment is not mandatory from a legal perspective.

In addition, the NBR highlighted the position of the European Central Bank (ECB), according to which the use of cryptocurrency schemes, as an alternative payment method, presents potential risks for the financial system deriving from the lack of regulation and supervision, money laundering, terrorism financing, price volatility and the lack of adequate security. Also, taking into account the exponential development in the price of most cryptocurrencies and the large fluctuations registered by those currencies in very short periods of time, the NBR classified them in 2018 as speculative assets, extremely volatile and risky. This has been proven to be true, especially in the beginning of 2021, when the price of the main cryptocurrencies (e.g., Bitcoin, Ethereum) fluctuated and some emerging ones (e.g., Dogecoin) actually boomed solely from public support from high profile businesspeople.

For lack of any specific regulation in this sense, **according to Romanian law, cryptocurrencies should be classified as assets under the category of movable (intangible) property**, thus any transaction having as its object the transfer of ownership over assets in exchange of cryptocurrencies cannot be qualified as a sale-purchase agreement, but rather as an exchange agreement.

Although no legal definition has been provided by Romanian law, certain legal obligations in respect to anti-money laundering, also having an impact on cryptocurrency related activities, have been

# PETERKA PARTNERS

THE CEE LAW FIRM

regulated by Law no. 129/2019. For example, providers of digital wallets will have to be authorized by the Romanian Exchange Authorization Commission and any processing of personal data of individuals in regards to this will fall under the provisions of the national and European regulations regarding such processing of data.

As proof of the focus of the authorities on the ever-increasing presence of cryptocurrencies, a proposal for a **regulation of the European Parliament and of the Council on markets in crypto-assets and amending Directive (EU) 2019/1937 has been published and shall be adopted in the near future.**

Nevertheless, there is a long road ahead for the authorities to set a framework for transactions involving cryptocurrencies, as they have become a reality in our daily lives. For example, a recent decision of a Romanian court decided over the annulment of a tax decision issued for income obtained from cryptocurrency exchange in 2015 and 2016, due to the fact that no legal grounds were in place for the taxation of such. Please note that this decision is not final and has been appealed.

As blockchain technology has evolved, our law firm has helped clients navigate the complex legal and regulatory environment surrounding this new technology, and provided innovative legal assistance.

Should you need any legal advice on matters related to blockchain technology and cryptocurrencies, please feel free to contact us at [dumitrescu@peterkapartners.ro](mailto:dumitrescu@peterkapartners.ro)

*An article by:*

*Andrei Dumitrescu – Senior Associate*

*PETERKA & PARTNERS Romania*

[www.peterkapartners.com](http://www.peterkapartners.com)