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# Blockchain

Greece

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## Law and Practice

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## 1. BLOCKCHAIN MARKET AND BUSINESS MODEL OVERVIEW

### 1.1 Evolution of the Blockchain Market

The Greek blockchain market today mainly evolves around cryptocurrencies. Although there are no official statistics, it appears that a significant number of people, comparable to other European markets, exchange fiat currency with cryptocurrencies, mainly via cryptocurrency exchanges operating globally over the internet, but also through a network of physical cryptocurrency ATMs. Some retailers accept payments in cryptocurrencies, but actual use of crypto as a means of payment is extremely limited.

While blockchain technology exists in the public and academic domain, there have not yet been any large-scale applications. The Hellenic Blockchain Hub (a non-profit organisation of executives from the public and private sector aimed at the dissemination of knowledge on blockchain and DLT technology and supported by various businesses and academic institutes, including the Hellenic Federation of Enterprises) has entered into memoranda of co-operation with various organisations, recently including the Supreme Council for Personnel Selection (ASEP).

The use of cryptocurrencies and other digital assets is expected to expand over the coming months, following global trends, including NFTs and potential market participants offering innovative services to attempt entering the Greek market.

Regulatory certainty will definitely facilitate such efforts and support innovation in blockchain applications in general. The recent introduction of a special digital wallet provider and cryptocurrency exchange registry by the Hellenic Capital Markets Commission (HCMC) is an important

step towards regulatory transparency in the Greek blockchain market, but more certainly needs to be done, especially with respect to the proper regulation of digital assets themselves. As an EU Member State, Greece will follow any EU initiatives, including the EU Commission proposals for a new EU law on crypto assets.

### 1.2 Business Models

Greece currently hosts a small but active blockchain community consisting mainly of academics and small start-ups developing blockchain solutions targeted to foreign markets. There have not yet been any large-scale blockchain applications in Greece, but businesses are exploring blockchain opportunities. A few weeks ago, a large Greek energy production company entered into a Power Purchase Agreement (PPA) in the Australian market, executed on the platform of WePower's blockchain-based renewable energy procurement and trading platform. In addition, a municipality in northern Greece is planning to use a pilot blockchain application, developed by the Greek Information Technologies Institute, for its procurement department, aiming to increase the transparency of its transactions.

### 1.3 Decentralised Finance Environment

As discussed in **1.1 Evolution of the Blockchain Market**, the Greek blockchain market mainly revolves around exchanges of fiat currency with cryptocurrencies, mainly via cryptocurrency exchanges operating globally over the internet, but also through a network of physical cryptocurrency ATMs.

By early April 2021, only a few digital wallet providers and cryptocurrency exchanges were registered with the newly introduced HCMC registry, so the real extent of the use of "decentralised finance" in Greece is uncharted territory and mainly consists of globally accessible international automated market makers, wallet aggregators, decentralised synthetic investment

platforms, decentralised prediction markets, decentralised stablecoins and decentralised lending platforms.

## **2. REGULATION IN GENERAL**

### **2.1 Regulatory Overview**

Greece has not adopted a specific regulatory regime applicable to market participants using blockchain technology or cryptocurrencies, nor “retrofitted” one or more existing regulatory regimes to apply to market participants using blockchain technology or cryptocurrencies.

The only recent regulatory change was the introduction of a special registry by the HCMC, in which all digital wallet providers and cryptocurrency exchanges providing their services in Greece or out of Greece to other countries must register certain information about their AML compliance policy and internal audits, their corporate and ownership status, their management and their business plan. If HCMC rejects the registration application, digital wallet providers and cryptocurrency exchanges are not allowed to pursue their activities in Greece or out of Greece.

Furthermore, businesses or individuals interested in using blockchain in Greece – especially in an application that has the characteristics of financial or banking services – must be aware that such activity may fall within the scope of Greek law 4514/2018 (Greek MiFID Law), which transposed MiFID II and other capital markets laws or regulations (eg, Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market), or could be classified as a regulated activity entrusted only to licensed financial institutions. Therefore, a detailed assessment of the particular characteristics of

each blockchain application should be made before entering the Greek market.

### **2.2 International Standards**

No standards applicable to the blockchain sector proposed by international bodies such as the Financial Action Task Force (FATF) or the Bank for International Settlements (BIS) have been implemented in Greece.

### **2.3 Regulatory Bodies**

HCMC is responsible for the monitoring of the proper functioning, transparency and integrity of the financial markets, as well as the supervision of unlawful offerings of products and financial services.

HCMC also supervises digital wallet providers and cryptocurrency exchanges providing their services in Greece or out of Greece for AML purposes.

The Bank of Greece supervises financial institutions, including e-money institutions, microfinance institutions and credit companies.

### **2.4 Self-regulatory Organisations**

There are no self-regulatory organisations or trade groups that perform regulatory or quasi-regulatory roles with respect to businesses or individuals using blockchain in Greece.

### **2.5 Judicial Decisions and Litigation**

No important judicial decisions that have played a role in interpreting (or establishing) the legal regime applicable to the use of blockchain have been issued in Greece and, as far as is known, there is no currently ongoing litigation in Greece that is expected to have an impact on the blockchain sector.

### **2.6 Enforcement Actions**

There has been no enforcement action related to digital assets or blockchain utilisation in gen-

eral in Greece. Since 2018, HCMC has published some warnings against certain online cryptocurrency exchanges.

## 2.7 Regulatory Sandbox

In March 2019, the Bank of Greece set up an Innovation Hub to enable fintech activities, and became a member of the European Forum for Innovation Facilitators (EFIF) upon its launch in April 2019. The Hub offers support to firms and/or natural persons that are introducing or considering the adoption of innovative, technology-driven financial products, services or business models, principally through enhancing their knowledge of the potential supervisory and regulatory obligations within the Bank of Greece's remit. This initiative aims to serve as a dedicated point of contact for those natural persons and/or firms (new or incumbent, regulated or not, technology companies, etc) that are involved in fintech activities to raise enquiries with the Bank of Greece about supervisory and regulatory aspects governing the provision of financial services in Greece.

## 2.8 Tax Regime

In Greece there is no special or explicit tax regime for blockchain or cryptocurrencies, and no formal guidance has been published by the tax authorities.

### Income from Cryptocurrencies Transactions

In its 2019 strategic plan, the Independent Public Revenues Authority (IPRA) declared its intention to propose the taxation of cryptocurrency income as income from portfolio investments. Therefore, any capital gains from the disposal of cryptocurrencies would be taxed as follows:

- for natural persons at a rate of 15% plus a progressive tax called solidarity contribution, which rises progressively from 2.2% to 10% and is calculated with reference to both tax-

able and tax-exempt annual income exceeding EUR12,000; and

- for legal persons as business income at the applicable corporate income tax rate.

The gain or loss is defined as the difference between the selling price, on the one hand, and the acquisition costs and income-related expenses, on the other.

### Income from Mining

Unfortunately, there is no formal guidance on the taxation of mining income. Depending on the specific circumstances, a reasonable approach would be to tax such income after the deduction of mining costs as business profit, at the relevant applicable income tax rate.

### VAT

In the Hedqvist case (*Skatteverket v David Hedqvist*, C-264/14, dated 22 October 2015), the European Court of Justice ruled that the sale of non-traditional currencies falls under the same VAT exemption as transactions relating to traditional currencies. Greek tax authorities have not yet expressed any opposing views to the Hedqvist case.

### Use of Cryptocurrencies as a Means of Payment

Under Greek law, any invoices issued for the sale of goods or the provision of services for an amount above EUR500 shall be settled by card or other electronic means of payment; it is questionable whether the direct use of cryptocurrencies for payment satisfies this condition. The rationale of the provision is to enhance tax compliance by making the use of payment channels with increased transparency mandatory. The anonymity of the cryptocurrencies appears to contradict said rationale.

## 2.9 Other Government Initiatives

No governmental bodies in Greece have established “task forces” nor mandated pre-existing bodies to look into the benefits of and/or the challenges posed by the use of blockchain. The Hellenic Blockchain Hub (a non-profit organisation of executives from the public and private sector aimed at the dissemination of knowledge on blockchain and DLT technology) has entered into memoranda of co-operation with some public entities, most importantly in January 2021 with the Supreme Council for Personnel Selection (ASEP), focusing on giving ASEP the means to optimise the personnel recruitment process for the Greek public sector by utilising blockchain technology.

## 3. CRYPTOCURRENCIES AND OTHER DIGITAL ASSETS

### 3.1 Ownership

There is no consensus nor even a broad discussion in Greek legal theory or case law about the legal nature of digital assets whose transfer is determined based on an instruction given to a blockchain network using a private cryptographic key.

Under Greek law, transfer of ownership depends on the legal nature of the transferred asset. It could be argued that a digital asset that is partly not dematerialised (eg, a private key incorporated in a physical medium like a USB drive) can be transferred as a movable asset in accordance with the Greek Civil Code, which entails the agreement of the transferor and the transferee, and the physical delivery of the asset.

In all other cases, assessing the legal nature of the digital asset by means of traditional legal concepts would lead to debatable results, and very much depends on the particular function

and characteristics of the asset. In order to argue that a digital asset stored in a blockchain ledger is a claim one needs to identify the counterparty of such claim; digital assets do not often incorporate a claim against a particular counterparty.

Furthermore, an attempt to characterise digital assets as securities (axiographa) is also problematic, given that Greek law provides for numerous clausus of securities; the parties do not have contractual freedom to create types of securities that are not regulated in the law.

The most consistent approach would be to categorise digital assets as sui generis rights, which are transferred by virtue of an agreement by the parties.

Regarding the finality of transfers via blockchain, as Greek law does not specifically recognise blockchain validation as a process of transferring assets, the blockchain transfer itself is irrelevant. To put it simply, if a USB drive that includes a private key is transferred as a movable asset, the transfer becomes final at the time of delivery to the transferee. Whether the acquisition of the private key is sufficient to enact the transfer of the digital asset on the blockchain should not be of legal interest, subject of course to any contractual rights the transferee may have against the transferor based on their contractual arrangement.

### 3.2 Categorisation

There is no straightforward characterisation of digital assets in Greece, and public authorities and legal debate on the matter mainly focuses on cryptocurrencies in general, without any further specific distinction.

The legal nature of digital assets should be assessed on a case-by-case basis, according to their specific characteristics.

First of all, it should be examined whether a digital asset assimilates the characteristics of a certain type of security (eg, share, bond) and consequently any legal provisions applicable to such type of security also govern the digital asset.

Secondly, it should be examined whether a digital asset falls within the definition of financial instruments under Greek law 4514/2018 (Greek MiFID Law), which transposed MiFID II, in order to assess whether MiFID II rules will be applicable to activities involving such digital asset.

Thirdly, an assessment whether a digital asset qualifies as electronic money should be made as defined in Greek law 4021/2011, which transposed Directive 2009/110/EC.

Lastly, it should be determined whether digital assets fall within the protective ambit of intellectual property rights, especially for the growing sector of non-fungible tokens.

### 3.3 Stablecoins

There is no particular regulation of digital assets whose value is intended to be pegged to a second asset (whether a fiat currency or another digital asset) or so-called stablecoins in Greece.

It should be noted, however, that stablecoins backed by deposits of fiat currency pose the following risks:

- they are likely to qualify as financial instruments under Greek law 4514/2018 (Greek MiFID Law), which transposed MiFID II, triggering the necessity for MiFID II compliance for issuers and counterparties active in the stablecoins market; and
- such stablecoins may qualify as electronic money as defined in Greek law 4021/2011, which transposed Directive 2009/110/EC, and thus trigger an electronic money institution licensing requirement.

### 3.4 Use of Digital Assets

The euro is the only legal tender in Greece in accordance with Article 10 of Regulation 98/974/EC. However, parties are free to contractually agree payment in any other form, including any form of digital assets. Some retailers are accepting payments in cryptocurrencies in Greece, but those are very rarely used.

Furthermore, under Greek tax law any invoices issued for the sale of goods or the provision of services for an amount above EUR500 shall be settled by card or other electronic means of payment; it is questionable whether the direct use of cryptocurrencies for payment satisfies this condition. The rationale of the provision is to enhance tax compliance by making the use of payment channels with increased transparency mandatory. The anonymity of the cryptocurrencies appears to contradict said rationale.

### 3.5 Non-fungible Tokens

There are no specific laws or regulations applicable to non-fungible tokens (NFTs) in Greece. It should be examined whether intellectual property rights are applicable, based on the content of a particular NFT.

## 4. EXCHANGES, MARKETS AND WALLET PROVIDERS

### 4.1 Types of Markets

There are numerous cryptocurrency ATMs operating in physical locations in Greece, which can be used to exchange fiat currency and cryptocurrency private keys. By early April 2021, only a few digital wallet providers and cryptocurrency exchanges had registered with HCMC, most of which operate the aforementioned cryptocurrencies ATM networks.



As far as is known, there are no other custodial or non-custodial exchanges, nor any decentralised exchanges.

#### **4.2 On-Ramps and Off-Ramps**

As noted in **4.1 Types of Markets**, there are numerous cryptocurrency ATMs operating in physical locations in Greece, which can be used to exchange fiat currency and cryptocurrencies. In addition, market participants in Greece seem to use the large globally active cryptocurrency exchanges accessible through the internet to exchange fiat currency for cryptocurrencies.

Nonetheless, in order to legally offer their services in Greece, such cryptocurrency exchanges must be registered in the HCMC register. It should be noted that there is no EU passporting regime for said registration process, and all cryptocurrency exchanges must comply with it.

Furthermore, depending on the particular set-up of “money transmission” from fiat to crypto and vice versa, such may fall within the ambit of electronic money or financial instruments, which would lead to the applicability of Greek law 4514/2018 (Greek MiFID Law) or Greek law 4021/2011 on e-money institutions.

#### **4.3 KYC/AML**

Greek law 4734/2018 (Greek AML Law) transposed Directive (EU) 2018/843 and is also applicable to digital wallet providers and cryptocurrency exchanges providing their services in Greece or out of Greece to other countries.

By virtue of HCMC decision no 5/898/3.12.2020, a specific registry was established in which all digital wallet providers and cryptocurrency exchanges must register certain information about their AML compliance policy and internal audits, their corporate and ownership status, their management and their business plan. If HCMC rejects the registration application, digital

wallet providers and cryptocurrency exchanges are not allowed to pursue their activities in Greece or out of Greece.

#### **4.4 Regulation of Markets**

Markets for digital assets are not regulated as such. Please see **2.1 Regulatory Overview** on potential existing regulation that could apply to digital assets markets, and **2.3 Regulatory Bodies**.

#### **4.5 Re-hypothecation of Assets**

There are no specific regulations on the re-hypothecation (on-transfer) of digital assets to third parties by digital asset exchanges. In any case, the ability of the digital asset exchange to transfer private keys belonging to its customers to third parties would depend on the contractual arrangement between the exchange and its customer. Limitations may apply if the digital assets qualify as financial instruments or electronic money, leading to the application of the relevant legislation.

#### **4.6 Wallet Providers**

As of 31 January 2021, digital wallet providers providing their services in Greece or out of Greece to other countries must apply to HCMC for registration in the relevant HCMC registry for AML purposes.

Custodianship of digital assets qualifying as financial instruments under the Greek MiFID Law is an ancillary investment service and, when combined with other investment services and activities, such custodian must be licensed in accordance with the Greek MiFID Law.



## 5. CAPITAL MARKETS AND FUNDRAISING

### 5.1 Initial Coin Offerings

HCMC has issued no formal guidance or opinion on fundraising through the creation and sale of tokens intended to be used as part of a decentralised network. However, the European Securities and Markets Authority (ESMA) issued a statement in November 2017 alerting firms involved in Initial Coin Offerings (ICOs) to the potential need to meet the following regulatory requirements, depending on the set-up of the ICO:

- the requirement for the issuance of a Prospectus in accordance with the Prospectus Regulation may arise if the coins or tokens could potentially fall within the definition of a transferable security;
- MiFID II requirements may apply where the coin or token qualifies as a financial instrument, or if the process by which a coin or token is created, distributed or traded is likely to involve some MiFID activities/services, such as placing, dealing in or advising on financial instruments; and
- an ICO scheme could qualify as an AIF, to the extent that it is used to raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy. Firms involved in ICOs may therefore need to comply with Alternative Investment Fund Managers Directive (AIFMD) rules.

### 5.2 Initial Exchange Offerings

There are no specific regulations in Greece applicable to fundraising through the sale of tokens intended to be used as part of a decentralised network by using a digital asset exchange as an intermediary. Nonetheless, given the similarity of such activity to ICOs, firms involved in such activity should be aware of the risks explained in **5.1 Initial Coin Offerings**.

### 5.3 Investment Funds

There are no special regulations in Greece applicable to investment funds or collective investment schemes that invest in digital assets. However, Greek law 4209/2013 on Alternative Investment Fund Managers, which transposed Directive 2011/61/EC on alternative investment fund managers (AIFMD), is highly likely to be applicable. AIFMs are required to comply with various organisational requirements and conduct of business rules, to adopt and implement a programme of activities and various policies and procedures addressing areas such as risk management, liquidity management, conflicts of interest, valuations, compliance, internal audit and remuneration, and to comply with ongoing capital, reporting and transparency obligations.

### 5.4 Broker-Dealers and Other Financial Intermediaries

There are no special regulations in Greece that apply to financial intermediaries that deal in digital assets. In the case of digital assets qualifying as financial instruments, MiFID II requirements will apply for broker-dealers or other financial intermediaries.

## 6. SMART CONTRACTS

### 6.1 Enforceability

In Greece there are no laws, regulations or binding judicial decisions addressing the legal enforceability of private contractual arrangements made in whole or in part utilising an agreed-upon computer code that executes across multiple “nodes” on a blockchain-based network.

Furthermore, there is no general view in the Greek legal community regarding the legal validity of such arrangements.

The Greek Civil Code, subject to specific statutory exceptions, allows the conclusion of contracts not in writing and the generally applicable freedom of contract gives counterparties the freedom to regulate their contractual relationship freely, so as to agree on a self-executing smart contract. Nonetheless, even if a smart contract is in principle legally valid and enforceable, its self-executing nature, being the main advantage of smart contracts, may cause tension when rules of general contract law need to be applied. For example, in case of duress, lack of sanity, etc, the Greek Civil Code provides a right for the counterparty to request the annulment of the contract, or in the case of force majeure a counterparty may request the amendment of the contract.

It is reasonably expected that the legal debate on smart contracts will advance hand in hand with the evolution of smart contract technology, and any pioneering “users” of smart contracts will give Greek courts the chance to address many aspects of their enforceability.

## **6.2 Developer Liability**

Liability under Greek law might arise in tort, based on a contractual relationship or a statutory provision; general fiduciary duty is not recognised under Greek law.

Therefore, developers of blockchain-based networks or the code that runs on these networks will be held responsible for damages that arise through the use of this software if such damages are directly attributed to the developers’ fault or negligence (tort liability).

Similarly, to the extent that a person is developing blockchain-based networks or the code that runs on these networks as his main business and offers it to consumers, he may be held responsible based on the Greek Consumer Protection

Law for any damages caused to users directly attributed to the developer’s fault or negligence.

Furthermore, and depending on how users make use of the blockchain-based networks, the liability of the developer may arise on the basis of the contractual relationship between the user and the developer. For public, non-permissioned blockchains, it seems that the establishment of a contractual relationship between the user and the developers is remote.

## **7. LENDING, CUSTODY AND SECURED TRANSACTIONS**

### **7.1 Decentralised Finance Platforms**

The regulation of decentralised financial (DeFi) platforms that match borrowers and lenders of digital assets should be assessed based on the legal categorisation of the digital assets being lent and the specific set-up of the platform.

The granting of loans and credits is a regulated activity in Greece and could, in principle, only be professionally undertaken by licensed credit institutions, microfinance institutions and credit companies. Nonetheless, it could be argued that the lending of digital assets that do not qualify as money or electronic money does not fall within the definition of loans or credits, so lenders of such digital assets are not required to be licensed.

With respect to DeFi platforms themselves, loan brokerage is not a regulated activity in Greece, but the reception and transmission of orders in relation to financial instruments and the execution of orders on behalf of clients is regulated under Greek law 4514/2018 (Greek MiFID Law), which transposed MiFID II. Therefore, to the extent that digital assets exchanged over a DeFi platform qualify as financial instruments under

the Greek MiFID Law, a DeFi platform could well fall within its scope.

## 7.2 Security

If the digital assets qualify as financial instruments under the Greek MiFID Law, they can be pledged in accordance with Greek law 3301/2004, which transposed the Financial Collateral Directive (Directive 2002/47/EC), provided that the pledgee and the pledgor fall within the scope of the law. A pledge over digital assets that do not qualify as financial instruments should be assessed based on their specific characteristics. Under Greek law, a pledge may be created over movable property, claims or any other rights. Therefore, digital assets that are partly not dematerialised (eg, a private key incorporated in a physical medium) can be pledged as any other movable asset in accordance with the process of the Greek Civil Code or Greek law 2844/2000 on registered pledge without any physical delivery to the pledgee, while digital assets that are fully dematerialised can be pledged in accordance with Greek law 2844/2000.

## 7.3 Custody

As of 31 January 2021, digital wallet providers providing their services in Greece or out of Greece to other countries must apply to HCMC for registration in the relevant HCMC registry for AML purposes.

The custodianship of digital assets qualifying as financial instruments under the Greek MiFID Law is an ancillary investment service and, when combined with other investment services and activities, such custodian must be licensed in accordance with the Greek MiFID Law.

## 8. DATA PRIVACY AND PROTECTION

### 8.1 Data Privacy

The protection of personal data is mainly regulated in Greece by the European General Data Protection Regulation (Regulation (EU) 2016/679 – GDPR).

Under the GDPR, personal data is defined as any information relating to an identified or identifiable natural person, so it should be initially examined whether data stored and transmitted in a specific blockchain is in a form that renders the identification of specific natural persons impossible, in which case the blockchain could fall outside the scope of the GDPR.

Even if a blockchain includes personal data, it appears that public, non-permissioned blockchains are by design controversial to the fundamental rights granted to individuals by the GDPR, including the right to erasure (right to be forgotten), the right to restrict processing, the right to data portability and the right to object, as these may be – in principle – enforced against a certain party and not against a decentralised system, especially a public and non-permissioned one.

Although extensive dialogue has developed in both the legal and technical communities on the matter, there are no regulatory initiatives or guidance deviating from the generally applicable GDPR provisions.

Therefore, the compliance of blockchain-based products or services with the GDPR should be assessed on a case-by-case basis.

### 8.2 Data Protection

Please see **8.1 Data Privacy**.

## **9. MINING AND STAKING**

### **9.1 Mining**

The mining of cryptocurrencies is not regulated in Greece. In practice, no considerable cryptocurrency mining activity takes place in Greece, taking into account the relatively high electricity cost.

### **9.2 Staking**

As far as is known, there are no “staking as a service” businesses established in Greece, and there is no specific regulation governing the “staking” of tokens to secure a blockchain-based network using a “Proof of Stake” consensus protocol.

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**Karatzas & Partners** was founded in 1963, under the name Karatzas Law Offices. Since its establishment, it has been active in the fields of civil, company, commercial and financial law, with its clientele being both Greek and international. The firm specialises in banking and finance, capital markets, competition, energy, M&A, privatisations, project finance, real estate

and telecommunications, and also in litigation in those fields, before both courts and arbitral tribunals. Karatzas & Partners currently consists of nine partners, four senior counsel, 33 associates, ten trainee lawyers and 20 employees in supporting roles (marketing, HR, accounting, IT, administration, etc).

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