



**COUNTRY
COMPARATIVE
GUIDES 2023**

The Legal 500 Country Comparative Guides

Greece

BLOCKCHAIN

Contributor

Zoulovits Kontogeorgou Law Firm



Penny Kontogeorgou

Partner | FinTech & Emerging Technologies Lawyer | penny.kontogeorgou@zklawfirm.gr

This country-specific Q&A provides an overview of blockchain laws and regulations applicable in Greece.

For a full list of jurisdictional Q&As visit legal500.com/guides

GREECE BLOCKCHAIN



1. Please provide a high-level overview of the blockchain market in your jurisdiction. In what business or public sectors are you seeing blockchain or other distributed ledger technologies being adopted? What are the key applications of these technologies in your jurisdiction?

Greece is home to an emerging blockchain ecosystem, populated by well-established businesses and organisations, start-ups, academia, and researchers as well as of official and unofficial communities of practice which constitute the primary facilitator of education and discussion in the field, due to the lack of relevant state-backed or industry initiatives.

However, the ecosystem is relatively small.

In the **Private Sector**:

The Greek blockchain market is mainly focused on **exchanges of fiat currencies with cryptocurrencies** through electronic and physical ATM cryptocurrency exchanges, while at the same time international players acting as digital wallet aggregators, decentralised investment, and lending platforms, have a footstep in the Greek market (i.e., eToro, Uphold, Bybit, Binance etc).

Founders of Greek blockchain companies are typically entrepreneurs or researchers with strong academic backgrounds and international experience. Due to the relatively small size of the domestic market for blockchain, companies at large develop solutions that correspond to the needs of international customers and markets.

FinTech and **RegTech** Startups (i.e. Nayms, Kryptonio, Wire) are getting more active in the Greek blockchain ecosystem, whereas we see some interest in the use of blockchain in the fields of Energy and Environment (Recytrust, Gridustry, BitRezus).

There are only few **NFT Marketplaces**, the most popular of which is Spania.io and a community of **NFT**

investors.

In addition, Greek blockchain and Web3 software engineers have been active in the international ecosystem, attracting Greek establishments of international blockchain companies in Greece (such as Mysten Labs).

Blockchain research is carried out by several members of the Greek **academia and research community**.

In the **Public Sector**:

There has not yet been any large-scale application of Blockchain technology in the Public Sector in Greece.

Greece is a signatory to the **European Blockchain Partnership (EBP)**, an initiative to develop an EU strategy on blockchain **and to European Blockchain Service Infrastructure (EBSI)** which aims to leverage the power of blockchain for the public good. EBSI is an initiative of the European Commission and the European Blockchain Partnership.

Initiatives - Communities

Fintech Innovation Hub: The FinTech Innovation Hub initiative is a scheme whereby the Bank of Greece can engage with firms and/or natural persons in order to monitor developments in the financial sector and provide non-binding guidance on the conformity of innovative financial products, services or business models with regulatory and/or supervisory expectations, including aspects of licensing or registration.

Hellenic Blockchain Hub

(<https://www.blockchain.org.gr/home/>, founded in 2018). Hellenic Blockchain Hub is a non-profit network of executives from the public and private sector aimed at (a) the dissemination of knowledge on the blockchain – DLT technology, (b) the promotion of blockchain technologies in important sectors of the economy and society, (c) the creation of a permanent mechanism for consultation with the Greek State and European institutions on institutional interventions or synergies,(d)

networking and synergies with collective bodies and policy makers, and equivalent Greek and foreign bodies, (f) the utilization of research and development.

Greek Fintech Hub: Six key Greek bodies are taking part in an initiative aiming at showcasing the fintech landscape in Greece: National Bank of Greece together with Endeavor Greece, the Onassis Foundation, the Hellenic Chamber of Hotels, the National & Kapodistrian University of Athens, and the Athens University of Economics & Business. And together with these institutions, the European Crowd Dialog initiative. A series of actions have been designed to strengthen entrepreneurship in Fintech, finance innovative businesses in the sector, link Fintech with research in universities and research centers, and inform and network with important networks and initiatives abroad.

The Greek digital Government and Public Services innovation HUB - GR digiGOV-innoHUB is led and co-ordinated by the National Infrastructures for Research and Technology (GRNET) and is supported by the country's leading Academic and Research Institutions specializing in AI, HPC and digiGOV. The Hub is also supported by an array of business, regional authorities and civil society organisations that have expressed their willingness to participate. GR digiGOV-innoHUB aims to develop an ecosystem of digital transformation actors by promoting innovation in Public Administration through the National Digital Portal for Public Services gov.gr. The objectives of digiGOV-innoHUB are aligned with the [Digital Europe Programme](#), Greece's [Digital Transformation Strategy 2020-2025](#), as well as with other European and national policies such as the [OECD Framework for Innovation in the Public Sector](#) and are summarised to the following:

- Support the development of a new generation of public services leveraging advanced digital technologies (AI, ML, IoT, Blockchain, HPC), with open source, open data and open standards.
- Develop an ecosystem of digital transformation actors at every level of public administration
- Promote innovation in the Public Administration,
- Facilitate regional cooperation and international networking in the context of open government principles.
- Strengthen the digital skills of civil servants.

GRNET and its partner, the Centre for Research and Technology-Hellas (**CERTH**) are implementing the project "**Hellenic Distributed Ledger Technology Infrastructure - ELEDGER**" which aims at establishing

a solid pillar for the development and spreading of the European Blockchain Partnership (EBP) initiative in Greece and supporting the participation and contribution of Greek stakeholders to the European Blockchain Service Infrastructure (EBSI), in particular, with regard to the European Self-Sovereign Identity Framework (ESSIF), and the Diplomas, Notarization and Asylum use cases. GRNET represents Greece in the European Blockchain Policy Group and is a Member of the European Digital Infrastructure Consortium participating in a number of Research Projects pertaining Blockchain technology.

2. To what extent are tokens and virtual assets in use in your jurisdiction? Please mention any notable success stories or failures of applications of these technologies.

Use of tokens and virtual assets in Greece is still emerging and evolving. Although Cryptocurrencies and Blockchain technologies are still gaining attention, we do not have a notable cryptocurrency business (crypto exchange or any other kind of VASP/CASP) licensed in Greece, nor any virtual assets trading Platform, as no national legal framework has been implemented (for the existing, poor however, legal framework regarding tokens, cryptocurrencies and the likes, see Q 9). However, there is a community of cryptocurrency investors primarily among Gen-Z and tech entrepreneurs and/or tech professionals. Cryptocurrency Entrepreneurial ventures have also emerged.

With regards to NFTs, there are some few NFTs Marketplaces, (the most notable is spania.io), a small community of NFTs investors and some ventures of NFTs by Greek Artistic Community (ie Bluca Greek mythical in Binance, Pavlina Vagionis). Although various local laws may apply to the use and trade of NFTs, however, NFTs have not been a subject matter in any piece of legislation per se, including the recently revised IP Law.

3. To what extent has blockchain technology intersected with ESG (Environment, Social and Governance) outcomes or objectives in your jurisdiction?

So far neither the regulatory authorities (such as Capital Market Commission and Athens Stock Exchange) nor the business practice acknowledge or refer to blockchain technology applicable in relations to ESG. In the Athens Stock Exchange 2022 ESG Reporting Guide there is not such reference to Blockchain. There is theoretical interest and possible proposals which are still at research level, but there is neither a strategy on how to

adopt the technology considering ESG issues, nor tangible results in daily use. As the technology is in its infancy and given the potential negative environmental impact, regulatory frameworks and guidelines are necessary to foster environmental sustainability. As of now, there is not yet any outcome, proposal, direction, or regulation to this regard.

4. Please outline the principal legislation and the regulators most relevant to the use of blockchain technologies in your jurisdiction. In particular, is there any blockchain-specific legislation or are there any blockchain-specific regulatory frameworks in your jurisdiction, either now or envisaged in the short or mid-term?

In July 2022, **Law 4961/2022** on 'Emerging Information and Communication Technologies, enhancement of Digital Transformation and other provisions' (the "**Law on Emerging Technologies**") was published in the Governmental Gazette. Article 31 of the New Law provides a definition on Blockchain and DLT Technologies, whereas Chapter E' (Articles 47 – 51) contains provisions regarding the 'Application of Distributed Ledger Technologies' (D.L.T). More precisely, Articles 47-48 contain provisions regarding the **validity** of a record on the Blockchain or other DLT Technology, the **enforceability** of a Blockchain or DLT Technology transaction per se, as well as the allocation of the burden of proof regarding (the existence of) records or transactions performed on the Blockchain or other DLT Technologies. The abovementioned provisions of the New Law: (a) make reference to Greek Civil Law provisions regarding the invalidity of transactions, (b) acknowledge that a Blockchain (or other DLT Technology) record could be part of a main contract conducted by other means, (c) provide that in case that a Blockchain record is declared invalid, the Court could rule for restitutio in integrum by way of either amending the record on the Blockchain or by way of compensation, and (d) allocate the burden of proof among the parties, by indicating that the party relying on or invoking the existence of a recording or a transaction, bears the responsibility of submitting the relevant data and information to the court; following the transformation of the programming language or code into a readable format, evidence can be submitted in court proceedings, subject to a report of a cryptography expert. Articles 49-51 of the Law, refer to smart contracts (see Q 16).

Law 4557/2018 "on preventing and combatting money laundering and terrorist financing" as amended by Law 4734/2020 (the "AML Law"),

provides a definition on virtual currencies and sets obligations on providers engaged in exchange services between virtual currencies and fiat currencies as well as to the custodian wallet providers (See Q 9).

To the extent that blockchain related products and services resemble financial or banking services or investment services, **Law 4514/2018** that has implemented the MiFID II Directive, may be applicable.

There is no other legislation or regulatory framework in Greece specifically relating to Blockchain or other DLT Technologies. Nevertheless, several existing laws and regulations are applicable to products/ services and activities/ operations based on or use Blockchain or other DLT Technologies (see Qs 9- 12 & Q 20).

In December 2020, the Ministry of Digital Governance issued "**The Digital Transformation Strategy 2020-2025 of Greece**", the so called '**Digital Bible**', which is the main strategic document, that sets priorities and goals for the digital transformation of the country. The Digital Bible includes provisions for the usage of **Blockchain** and **DLT Technologies** in the Public Sector, as a tool for digital transformation, emphasising on their use in the digitization of public contracts, storage of digital fingerprints of public documents, for public document and certificates verification, for health data management, for the supply chain e.t.c.

The **Hellenic Capital Market Commission** acknowledges the challenge of crypto assets and adopts the European Securities & Markets Authority (ESMA) 2022 Risk Analysis on "Crypto-assets and their risks for financial stability". At the same time, it provides warnings to the investors (public) in relation to several cryptocurrencies vendors and underlines the risks involved in this non- regulated activity.

The **Bank of Greece** (BoG) acknowledges the use of blockchain technologies as part of fintech adopted by Greek financial institutions (as noted in the **Bank of Greece's (BoG) Fintech Hub** Annual Report).

The **National Cyber Security Policy** recognises Cryptojacking as a cybersecurity issue and provides for measures to prevent and or tackle cryptocurrency fraud.

5. What is the current attitude of the government and of regulators to the use of blockchain technology in your jurisdiction?

Based on initiatives mentioned above (see Q1 & Q 4) and below (see Q6), it can be assumed that the Greek government and the Regulators acknowledge the significance of Blockchain technology applications in key

fields, both in public and private domain (transactions, authentication, financial transactions, investments etc.) and the related risks. Setting up an essential framework of regulation for blockchain activities, while at the same time Regulators provide guidelines and build on mechanisms for educating and supporting the Blockchain community, is a goal and a way going forward. It is notable that risks for crypto fraud are provided in the national cyber security strategy.

With the enactment of the New Law on **Emerging Technologies (Law No 4961/2022)**, it is acknowledged that a framework regulating the use of Blockchain and DLT Technologies will ensure legal certainty and enhance trust, foster innovation for projects based on Blockchain and other DLT Technologies and will attract more investors. Emphasis has been placed in policymaking by Government bodies, such as the Ministry of Tourism, on the Blockchain Ethical Design Framework, to safeguard social values.

6. Are there any governmental or regulatory initiatives designed to facilitate or encourage the development and use of blockchain technology (for example, a regulatory sandbox or a central bank digital currency initiative)?

Greece is a signatory to the **European Blockchain Partnership (EBP)**, an initiative to develop an EU strategy on blockchain and to **European Blockchain Service Infrastructure (EBSI)** which aims to leverage the power of blockchain for the public good. EBSI is an initiative of the European Commission and the European Blockchain Partnership.

Two regulatory bodies in Greece have undertaken initiatives to facilitate and encourage the use of blockchain technology:

A. Bank of Greece: Is the country's Regulatory Body, supervising financial institutions including e-Money Institutions, Payment Institutions, microfinance institutions and credit institutions. Bank of Greece has set up:

- **Regulatory Sandbox** (the '**BoG's Regulatory Sandbox**'), (established and operating by virtue of the Executive Committee Act 189/1/14.05.2021), which constitutes a regulatory regime and a mechanism that enables participants (financial technology firms- FinTech) to carry out small scale testing of innovations in financial sector, in a controlled regulatory

environment, within specified parameters and timeframes under the BoG's supervision and in direct cooperation with the BoG. BoG acknowledges that Tokenisation, Blockchain and Distributed Ledger Technology (DLT), as well as Smart Contracts are innovative technologies and solutions which may be used by prospective Applicants within their propositions.

- **Bank of Greece's FinTech Innovation Hub** has been set up to serve as a communication channel between the Bank of Greece and interested parties, by providing information, clarifications and guidance on the regulatory and supervisory framework within the Bank's competence. Through the Hub, the Bank of Greece aims to gain a deeper insight into opportunities, challenges and risks arising from or associated with FinTech innovation; engage with firms and/or natural persons to monitor developments in the financial sector; and provide its (non-binding) guidance on the conformity of innovative financial products, services or business models with regulatory and/or supervisory expectations, including aspects of licensing or registration.

B. Hellenic Capital Markets Commission ('HCMC'):

The Hellenic Capital Market Commission (HCMC) was established as a legal entity by Law 1969/91 and organized by Law 2324/1995, aiming to ensure the protection and the orderly and efficient operation of the capital market. HCMC supervises, among others, Greek and foreign firms offering investment services, undertakings of collective investments and digital wallet providers and cryptocurrency exchanges providing service in Greece for compliance with money laundering legislation. The HCMC has set up:

- **The HCMC's Financial Innovation Hub** is addressed to Entities (e.g. startups) not supervised by the HCMC and to Companies, supervised by the HCMC, planning to start activities in the financial sector, within the HCMC's competence, through the creation and/ or introduction of an innovative financial product or service based on information technology, related to the application of Robo-advice, Algorithmic trading, Equity crowdfunding, DLT/ Blockchain, FinTech, RegTech, Cloud computing, Information Technology. The Hub has the following objectives: (a) to provide support to companies/ entities introducing innovative financial products or services in their effort to understand the applicability of the relevant

regulatory framework and the compliance requirements, (b) to engage with these companies/ entities to identify and address the risks associated with innovative products or services and understand their benefits in order to promote the healthy development of FinTech in the Greek market, (c) to identify any need for clarification or amendment in the existing regulatory framework.

- **In-house Innovation Hub Working Group**, comprising experts from HCMC's various departments, which provides a dedicated contact point for entities requesting engagement with the Innovation Hub.
- **The FinTech Forum**, which brings together academics, researchers, representatives of startup incubators/ accelerators and agencies responsible for the dissemination of knowledge and information on FinTech with the aim to facilitate the understanding of innovative products, services, business models of the ecosystem, as well as technical architecture issues;

7. Have there been any recent governmental or regulatory reviews or consultations concerning blockchain technology in your jurisdiction and, if so, what are the key takeaways from these?

There is not yet any formal **governmental** or **regulatory** reviews or consultations concerning Blockchain in Greece.

The 2022 Law on **Emerging Technologies (L. 4961/2022)** articles 47-50) introduces Blockchain and DLT Technology into the Greek institutional framework and regulates blockchain-based contracts and blockchain-based authentication methods.

Blockchain is an active topic in academia, with several academics and commentators publishing related articles.

BoG's FinTech Innovation Hub published its Annual Report (2022) which provides a general overview of the developments in the FinTech sector, underlying that over 50% (in relation to 39% in 2021) of the queries received referred to Blockchain and DLT technologies, crypto-assets and Regulatory Technology.

8. Has any official guidance concerning the use of blockchain technology been published in your jurisdiction?

There is no official guidance as of today on the use of Blockchain Technology in Greece.

9. What is the current approach in your jurisdiction to the treatment of cryptocurrencies for the purposes of financial regulation, anti-money laundering and taxation? In particular, are cryptocurrencies characterised as a currency?

A. Cryptocurrency under Financial Regulation.

Blockchain and DLTs, along with their derivative cryptocurrencies as well as alternative forms of blockchain financing, remain largely unregulated in Greece.

There is no Law in Greece to explicitly ban the use and trade of cryptocurrencies, however, we do not have as of now, one piece of legislation dedicated to the financial regulatory treatment of cryptocurrencies. Art. 3(24) of the national Law 4557/2018 "on preventing and combatting money laundering and terrorist financing" as amended by Law 4734/2020 ("the AML Law"), in the definition on virtual currencies, underlines that virtual currencies "constitute the 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 both physical and legal persons as a means of exchange which can be transferred, stored or distributed electronically".

On two occasions, in 2014 and in 2018, the Bank of Greece (BoG) issued announcements warning the public of the potential risks associated with digital currencies. On the same note, on three occasions, in 2017, 2018 and 2021, the Hellenic Capital Market Commission (HCMC) communicated to the general public the warnings of ESMA on ICOs, ESMA/EBA/EIOPA on virtual currencies and ESMA on non-regulated crypto assets, highlighting the potential risks associated with them. The Hellenic Capital Market Commission in its recent announcement to the general public (dated on 13.10.2022), underlined that does not regulate cryptoassets market, nor the investment on cryptoassets.

It shall be noted that Law 4514/2018 (that has implemented Directive 2014/65/EU on markets in financial instruments (MiFID II), requires entities that provide investment services or the carrying out of investment activities to obtain a license from the Hellenic Capital Market Commission or the

corresponding supervisory authority of another EU Member State. Provision of investment services without such a license, constitutes an offence, which carries severe criminal and administrative sanctions. The HCMC draws the attention of investors to the assessment of companies (with which they intend to cooperate or are cooperating) with regard to their authorisation and supervision regime.

Yet, with respect of the crypto/ blockchain financing and according to guidance from the European Securities and Markets Authority (ESMA), firms give careful consideration as to whether their activities constitute regulated activities. If their activities constitute a regulated activity, firms must comply with the relevant legislation and any failure to comply with the applicable rules would constitute a breach.

The coming into force of the Markets in Crypto-assets Regulation (MiCAR) regulating crypto-assets other than NFTs, crypto-assets issued banks or public authorities, or those not falling within the existing financial services legal framework (such as crypto-assets that qualify as financial instruments, deposits, funds or securitisation positions), by laying down comprehensive set of requirements for the prudential operations of issuers and offerors of crypto-assets and of providers of crypto-asset services, will create a bespoke regime for such crypto-assets, leading to legal certainty and security to the participants of the crypto-ecosystem (CASPs, investors, issuers, etc.). MiCAR is directly applicable to all member states of the European Union. it is expected that the existing national rules will be replaced by the provisions of MiCAR.

B. Cryptocurrencies under AML Law

The regulation of cryptocurrencies falls under the regime of 5th European Union Anti-Money Laundering Directive ("AMLD5") which was transposed in the national Law 4557/2018 "on preventing and combatting money laundering and terrorist financing" as amended by Law 4734/2020 (the "AML Law").

The AML Law includes key definition on virtual currencies (see above) and custodian wallet providers as 'the entity that provides services to safeguard private cryptographic keys on behalf of its customers, to hold, store and transfer virtual currencies.' (art.3.(25);

Specifically, the AML Law is applicable to the providers engaged in exchange services between virtual currencies and fiat currencies as well as to the custodian wallet providers, (definitions of both are provided in art. 3). Both categories of providers are considered obliged entities for the purposes of AML controls as envisaged in the aforementioned Law (art. 5, sections (1β) and (1γ)

respectively). Furthermore, both type of providers must register their activities according to the provisions of art. 6, par. 1 (β) of Law 4557/2018. The competent authority for supervising compliance of the aforementioned obliged entities with the law, as well as for maintaining the respective Register, is the Hellenic Capital Market Commission ('HCMC'). The HCMC by virtue of its BoD decision No 5/898/3.12.2020 (as amended by BoD's decision No 7/960/04.08.2022), has set the formalities for both the above-mentioned obliged entities, regarding the application for registration (including the type of information and documents to be submitted and related costs) as well as the criteria for their removal from the Register. HCMC must approve the registration application for digital wallet providers and cryptocurrency exchanges to be able to provide their services, otherwise that are not allowed to pursue their activities in Greece or abroad.

C. Cryptocurrencies under Tax Law

There is not as of today a special tax regime in the Greek Tax Legislation that governs the profits that taxpayers acquire from crypto currencies' capital gains, or generally of the trade/ investment of cryptocurrencies. Those profits, however, constitute income subject to taxation and all provisions regarding tax evasion subject to Law 4174/2013 (art. 66 et seq) apply to any undeclared income from cryptocurrency transactions gains.

The Independent Authority for Public Revenue (AADE) of the Hellenic Republic, in its operational plan for 2019, takes a first approach by treating the institutionalisation of the taxation of cryptocurrencies as a portfolio investment. Given the intention of the AADE and in the absence of specific legislative provisions, the AADE considers the above income to be capital gains and will be taxed in accordance with Article 43 of the Income Tax Code a rate of 15%. It is worth noting that these incomes are also subject to solidarity levy since there is no explicit exemption for them in the tax legislation.

As far as the tax regime applicable to the issuers of cryptocurrencies is concerned, there are no tax and accounting guidelines, but only the Memorandum 104/27.02.2018 by the Accounting Standards Board (Σ.ΑΟ.Τ), according to which the issuers' income out of the trade of cryptocurrencies, constitutes income deriving out of commercial activity and therefore is subject to taxation.

Finally, with regard to the use of cryptocurrencies as a mean of payment no additional tax is imposed (decision C-264/14 ECJ).

10. Are there any prohibitions on the use or trading of cryptocurrencies in your jurisdiction?

Subject to all legal provisions mentioned herein (see in particular Q 9), there are not per se direct prohibition on the use and trading of cryptocurrencies under the Greek legal regime.

As described in Q 9, **Law 4514/2018** implementing Directive 2014/65/EU on markets in financial instruments (**MiFID II**), provides that all investment providers must obtain a license from the Hellenic Capital Market Commission or a competent authority of another Member State. Based on this legislation, the HCMC, announced to the public on 20.10.2022 that the Platform branded as «24WAYSFX» («<https://24waysfx.com>») cannot provide investment services in the absence of license as per Law 4514/2018. The HCMC draws the attention of the investors to diligence the lawful operation of the issuers of cryptocurrencies providing investment services, while underlines that HCMC is not the regulator of the cryptoassets market and of the providers of services related to cryptocurrencies.

11. To what extent have initial coin offerings taken place in your jurisdiction and what has been the attitude of relevant authorities to ICOs?

There has not been an ICO in Greece as of today.

Yet, with respect of the crypto/ blockchain financing and according to guidance from the **European Securities and Markets Authority (ESMA) (the 2017 ESMA's Statement on ICOs, ESMA50-157-828)**, firms operating ICOs shall give careful consideration as to whether their activities constitute regulated activities. Namely, where the coins or tokens qualify as financial instruments it is likely that the firms involved in ICOs (or similar) conduct regulated investment activities, such as placing, dealing in, or advising on financial instruments or managing and marketing collective investment schemes. Moreover, they may be involved in offering transferable securities to the public. In such case, they need to contact the national competent authorities.

Under the light of the **AML Law** (See Q9), an ICO may be considered as a service relating to cryptoassets and the entity proceeding with such an ICO may be subject to registration and organizational compliance as a **Crypto Assets Service Provider (CASP)**.

Both the **Hellenic Capital Market Commission (HCMC)** and the **Bank of Greece (BoG)** have

committed efforts to understand and eventually provide a regulatory framework for these assets. Both competent authorities have implemented their own Innovation Hub, while BoG implemented mid-2021 a Regulatory Sandbox in collaboration with EBRD, funded by the European Union. On two occasions, in 2014 and in 2018, the BoG issued announcements warning the public of the potential risks associated with digital currencies. On the same note, on three occasions, in 2017, 2018 and 2021, the Hellenic Capital Market Commission communicated to the general public the warnings of ESMA on ICOs, ESMA/EBA/EIOPA on virtual currencies and ESMA on non-regulated crypto assets, highlighting the potential risks associated with them.

12. If they are permissible in your jurisdiction, what are the key requirements that an entity would need to comply with when launching an ICO?

There is no legal provision in the Greek regulatory regime that pose a ban on the ICOs. In principle, ICOs are unregulated in the sense that there is not overarching laws imposing legal and/or regulatory requirements on the activity of launching or running an ICO. When launching an ICO, depending on its structure (i.e nature and categorization of the tokens) the following shall be taken under consideration on a case-by- case basis:

Where the coins or tokens qualify as **financial instruments**, it is likely that the firms involved in ICOs conduct regulated **investment activities**, such as placing, trading in or advising on financial instruments or managing or marketing collective investments schemes, in which case the **MiFID II** as has been implemented by **Law 4514/2018** applies.

Where the ICO structure resembles or involves the **offering of transferable securities to the public**, the **Prospectus Directive (EU) 2017/1129** (implemented in national legal system with Law 4706/2020) may apply, which requires publication of a prospectus (subject to exemptions) with the necessary information and material for investors to conduct an informed assessment.

Where the ICO qualifies as an **alternative investment fund**, then the **Alternative Investment Fund Managers Directive (AIFMD) (EU) 2011/61** (implemented in national legal system with Law 4209/2013), imposing operational and organisational rules and transparency requirement, may apply.

Utility tokens, i.e tokens intended to provide access to

a digital application or service using a blockchain, may in principle fall outside of current financial and securities regulation. Attention shall be given to utility tokens that cannot be used as such at the point in time of issuance, it must be considered a security.

Compliance with **AML Laws** shall always be ensured as it is important to identify whether the issue of the token is an obliged entity that need be Registered with the HCMC.

Tax Laws shall be taken under consideration applicable to issuers and investors.

Contract Laws, Consumer Laws, Data Protection Laws, IP Laws, Competition Laws as well as **Civil Law** referred to the sale of goods, or **Property Laws** are applicable (for a bit more details see Q 20).

13. Is cryptocurrency trading common in your jurisdiction? And what is the attitude of mainstream financial institutions to cryptocurrency trading in your jurisdiction?

Not that common as of today. There are not many notable cryptocurrencies vendors that are engaged to any of the activities connected to the cryptocurrencies. Nor has there been any licensed entity. There is a number of Startups participating in the BoG's Innovations FinTech Hub, some of which are intended to explore the related technologies. Mainstream financial institutions have not adopted any cryptocurrency solution; however, they are called to adopt to the new developments in any manner.

14. Are there any relevant regulatory restrictions or initiatives concerning tokens and virtual assets other than cryptocurrencies (e.g. trading of tangible property represented by cryptographic tokens)?

Subject to any restrictions and regulatory requirements mentioned above (See in particular Q 9), there are no prohibitions in Greece on issuing or trading virtual assets. The decisive factor to determine the legal regime applicable, is the nature of the rights associated with the token in question (i.e security such as bond or share, financial instrument or e-money) and this requires a case-by-case assessment.

15. Are there any legal or regulatory issues

concerning the transfer of title to or the granting of security over tokens and virtual assets?

Under Greek Laws, the legal issues concerning the transfer of ownership depends on the legal nature of the transferred asset. With regards to tokens and virtual assets, as those may be serving several uses and functions, baring different characteristics, therefore having several legal natures, there is not a single rule or framework that apply to the transfer of title to or the granting on security over tokens and virtual assets specifically. In the absence of a particular law that determines the transfer of tokens/ virtual assets ownership, we apply Greek **Civil Law**, which provides (art.361) for the freedom of contract, therefore parties to a transaction are free to agree on transfer of title, provided that such arrangements do not conflict with any mandatory rules of law. As long as there is no certificate or title attached to a token, or other material that the token is incorporated (i.e. USB or other physical medium), in which cases the transfer of the token / virtual asset would be concluded by the physical delivery of the asset (transfer of a movable asset), a transfer is subject to assignment of the rights attached to a token.

Issues may arise in relation to the transfer of claims against a particular issuer represented in a digital asset, in which case it shall be assessed whether a transfer of such a claim can be fulfilled by a mere blockchain or other DLT transaction. In addition, the transfer of certain type of assets, such as real estate, shares etc. shall be subject to a notary deed according to Greek Laws, therefore a token transfer of those kind of assets does not fulfil the conditions of a valid transfer.

16. How are smart contracts characterised within your legal framework? Are there any enforceability issues specific to the operation of smart contracts which do not arise in the case of traditional legal contracts?

A definition for smart contracts was recently introduced for the first time in Greece in **Law 4961/2022 on Emerging Technologies**, providing that a smart contract is a "set of coded computer functions concluded and executed through Distributed Ledger Technology in automated electronic format with the use of instructions on the performance of actions, omissions or tolerance, which are based on the existence or absence of specific conditions, according to terms directly recorded in computer code, programmed commands or a programming language".

The new Law contains provisions on the elements that qualify a data record in the blockchain or other DLT as a smart contract, the conclusion, validity and evidentiary effect of smart contracts and their enforcement both by the parties involved and the courts. In a nutshell, smart contracts in Greece:

- are legally binding terms agreed upon among the parties recorded as data and/or transactions in the blockchain or other DLT-based applications (terms can be determined by the parties and coded into the computer program or they can be selected / approved by the parties from a pre-selected set of terms).
- Their validity and enforceability are subject to the interpretation of the law and the courts, which, essentially, indicate that a smart contract is valid so long as it meets the criteria set out in the Civil Code and the Code for Civil Procedure, which are the cornerstones for contract law in Greece.
- Where signature is required for the conclusion of a contract, the Law also provides for their signing via electronic signatures.
- Smart contracts can be part of other (traditional) contracts, drafted according to the law.

Given, however, the very recent entry into force of the new Law, academic literature and jurisprudence are not yet rich regarding the enforceability of smart contracts, as compared with traditional ones. Some of the interpretation issues that the legislator and the courts will need to shed light on include provisions relating to the means of restitution available to the parties. For example, the Law provides for restitution in integrum in case a smart contract (and the corresponding transactions) is declared invalid or unenforceable. Enforcing this provision is, however, highly challenging, given the nature of the blockchain (and the whole essence of DLT-based technology) which requires that the chain of blocks is “unbreakable” and untampered with, to ensure the continuity and validity of the rest of the recordings (let alone the environmental impact of repeated registrations and de-registrations, that require an excessive number of resources and energy).

Moreover, all on – chain concluded contracts are regarded as contracts conducted by distance means, therefore distance contract consumer protection legislation will be applicable where one of the parties acts under its capacity as a consumer. To this regard issues related to unfair terms, cooling off period, right to withdrawal etc. will face the challenge of enforcement.

17. To what extent are smart contracts in use in your jurisdiction? Please mention any key initiatives concerning the use of smart contracts in your jurisdiction, including any examples relating to decentralised finance protocols.

Smart Contracts and decentralised finance protocols are not that common in Greece as of today, -only few Start-ups are experimenting their use (i.e gxblocks). The inclusion of Smart Contracts in the Greek legislative regime will create the basis for their use in our jurisdiction. Considering that decentralized finance protocols are not organized under a specific jurisdiction's legal regime, it is not always evident to determine whether any such cases exist in Greece.

No key initiatives concerning the use of smart contracts, such as decentralised financial protocols, have been launched as of today.

18. Have there been any governmental or regulatory enforcement actions concerning blockchain in your jurisdiction?

As already stated, on two occasions, in 2014 and in 2018, the **Bank of Greece (BoG)** issued announcements warning the public of the potential risks associated with digital currencies. On the same note, on three occasions, in 2017, 2018 and 2021, the **Hellenic Capital Market Commission** communicated to the public the warnings of ESMA on ICOs, ESMA/EBA/EIOPA on virtual currencies and ESMA on non-regulated crypto assets, highlighting the potential risks associated with them. The **Hellenic Capital Market Commission** has made two announcements to the general public regarding two cryptotrading platforms that are operating without a license, calling for due diligence process before engaged to the crypto market, whereas in its recent announcement to the general public (dated on 13.10.2022), underlined the volatility of the crypto markets and that HCMC does not regulate cryptoassets market, nor the investment on cryptoassets. HCMC can only impose enforcement actions when it concerns regulated activities under its capacity.

19. Has there been any judicial consideration of blockchain concepts or smart contracting in your jurisdiction?

As of today, there is only one court decision regarding Bitcoin (**Decision No 88/2021** of the **Court of Appeal** Western Central Greece which uphold the Decision

No193/2018 of the Court of First Instance). The Appeal Court in year 2021, in upholding the first instance, it held that, within the framework of the New York International Convention of 1958 on the recognition of foreign arbitral awards, which Greece has ratified since 1961, the recognition and declaration of enforceability of an American arbitration award awarding damages in bitcoin, violates the public policy of our country. The main rationale of the decision is that inflow of funds into Greece in the form of bitcoin and cryptocurrency in general is not acceptable under Greek law, as the above practice favours tax evasion and facilitates financial crime, causing uncertainty in commercial transactions, while at the same time, they bring harmful consequences to the detriment of the national economy. The Court of Appeal concludes its reasoning with the following considerations: The recognition of a foreign arbitral award that treats bitcoin as a decentralized monetary unit of peer to peer and orders the payment of a specific amount in bitcoin, is contrary to public policy, and in particular, to the fundamental rules and currently prevailing principles of the Greek legal order at the social, economic and political level. Finally, encouraging such transactions, as well as supporting their equation with those taking place in officially recognized currency units, would have the consequence of disrupting the prevailing economic conditions of the country, given the sudden and unpredictable fluctuation of the value of bitcoin.

The Court of Appeal in its judgement did not follow the developments in the cryptocurrencies between 2018 (decision of Court of First Instance) and its judgment in 2021 and it is most likely that the judgment will be considered obsolete in the coming years.

20. Are there any other generally-applicable laws or regulations that may present issues for the use of blockchain technology (such as privacy and data protection law or insolvency law)?

As already mentioned in Q 12, a whole set of laws (other than the regulations mentioned in this document and in particular in Q 12) shall be under consideration by corporations operating blockchains or building applications (products/ services on blockchains. In particular and indicatively:

Data Protection Laws: The application and enforcement of GDPR is a challenge for blockchain vendors. Due to the diversity of actors involved in a blockchain and its decentralized nature, it is not easy to identify the Data Controllers and Data Processors. It is not feasible in many cases to demonstrate the privacy

by design of a blockchain application, in some others may be impossible to fulfil the right to erasure or to revoke a consent or safeguard the purpose limitation principle as blockchain by its nature processes all data recorded in the blocks perpetually.

IP Laws: for instance, in the domain of the NFTs, trademark protections shall be extended to cover the digital assets represented by NFTs, or licensing issues defining ownership in the NFTs.

Consumer Protection Laws, for instance to the extent a party to a smart contract acts under its capacity as a consumer.

Advertising Laws, to the extent crypto assets are considered financial products.

Property Laws in cases for example where blockchain products constitute financial instruments such as securities or when they concern real estate in which case specific property law requirements regarding the transfer of ownership, shall be taken under evaluation.

Payment Services Laws (such as PSDII or e-Money Laws) may play a role to the extent e-money and other payment services are involved.

Civil Laws as to the Contracts' enforcement

Insolvency Laws for the treatment of cryptoassets for the purposes of insolvency proceedings.

The Greek blockchain and cryptocurrency ecosystems will benefit at large from the DLT Pilot Regime Regulation (DLT PRR), which, together with the proposal for a bespoke regime for cryptoassets (such as the Regulation for Markets in Crypto Assets (MiCA) which will provide the necessary legal certainty to the participants of the crypto-ecosystem (CASPs, investors, issuers, etc.), will provide appropriate levels of consumer and investor protection, legal certainty for crypto-assets, will enable innovative firms to make use of blockchain, distributed ledger technology ('DLT') and crypto-assets while at the same time will ensure financial stability.

21. Are there any other key issues concerning blockchain technology in your jurisdiction that legal practitioners should be aware of?

Till the adoption and enforcement of all specific legislation that is currently under way, and which will shed light to legal uncertainties (i.e. MiCA, DORA, DLTR etc.), to ensure compliance with the applicable laws and regulations, a case-by-case assessment is of paramount

importance to evaluate the nature and characteristics of a given product/ service has been designed on the basis of blockchain or related technologies.

A final point to consider, is the legal measures to take

under consideration, in order to safeguard enforceability of an arbitration decision as per the usual T&Cs in the cryptocurrency trade platforms and determine the competent courts/ jurisdiction.

Contributors

Penny Kontogeorgou

**Partner | FinTech & Emerging
Technologies Lawyer**

penny.kontogeorgou@zklawfirm.gr

