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Legal Aspects on the Currency Policy, Currency Regime, Currency Market and Virtual Currency

Introductory notions

The concept of “currency” designates the cash that is used in international transaction, other than the one used for national transactions. Foreign currency is, practically, the national “coin” of another state or the “coin” used by a monetary union of some states¹.

The currency operations can be defined as representing “the collections, payments, compensations, transfers, credits, and any transactions in currencies and that can be made by bank transfer, in cash, with payment instruments or by any other payment methods used by the credit institutions according to the nature of such operations”.

Currency operations can be:

- currency operations between residents and non-residents;
- current currency operations;
- capital currency operations;
- currency operations between residents.

Currency exchange is an operation by which a sum of money is changed into another currency at a certain exchange rate. The exchange rate is the price of a currency expressed in relation to the currency of another country. The economic development of a state, the level of prices, the imports and exports depend on the evolution of the currency exchange rate, its fluctuations directly affecting both the natural persons and business enterprises.

¹ Art. 4 pct. 4 of Annex no. 1 List of Regulation no. 4/2005 of National Bank of Romania on the currency regime.

Currency policy

While the monetary policy of a state represents a set of measures meant to ensure the internal stableness of a national currency, the currency policy is a set of measures being taken to ensure and maintain the stableness of the national currency at a foreign level².

An important issue in accomplishing this objective is the exchange rate policy. Maintaining a fair exchange rate ensures the competitiveness of the national merchandises and the recovery of expenses, obtaining profit at international standards and also has an influence on the currency demand and offer. That is why the state central bank, in our case the National Bank of Romania, has available a series of measures to intervene on the currency market in order to maintain a fair exchange rate.

The central bank is the competent authority for the working-out and application of the exchange rate policy. To accomplish such prerogatives, the law maker established that the central bank is authorised³:

- to set up the balance-of-payment and other works on the international investment position of the country;
- to assign the exchange rates for its own operations on the currency market, to calculate and publish the average rates for statistical purposes;
- to keep and manage the state international reserves.

From the currency-related regulations coming exclusively from the central bank, it results in, concerning the monitoring and control activity of the currency transactions within the country, it is competent among others:

- to authorise, supervise and also to withdraw the authorisation of legal persons making currency transactions;
- to establish limits for owning foreign assets and for making operations with gold and foreign assets.

Currency regime

The currency policy is a set of measures being taken to ensure and maintain the stableness of the national currency at a foreign level⁴.

The currency regime is a form of materialization of the currency policy.

The currency regime is a set of rules regulating the way of carrying out currency operations.

² R. Postolache, *Drept bancar (Banking Law)*, C.H. Beck, Bucharest 2012, p. 23.

³ Art. 9 para.(2) of Law no. 312/2004 on the status of the National Bank of Romania.

⁴ R. Postolache, *op. cit.*, p. 23.

The currency regime is established by the central bank. Each central bank, according to the final objectives of its currency policy, generates a certain currency regime.

In our country, the currency regime is characterised by: ownership on the currency, convertibility of the national currency and the currency market.

The currency regime in our country is established by Regulation no. 4/2005 of the National Bank of Romania on currency regime, with further amendments. The regulation states the way in which the currency operations between residents and non-residents and between residents, are made.

Pursuant to art. 2 (Chapter 2 SectionI) of the Regulation, the current currency operations and the capital ones are carried out freely between residents and non-residents, in currency and in the national currency (RON).

The Regulation also states in art. 3 para.(1) that, between residents, the payments, collections, transfers and any other such operations, which are the object of the commerce with goods and services, are carried out only in the national currency (RON), except for some operations especially provided by the regulation, which can be carried out in foreign currency, too. The other operations between residents, which are not object of the commerce with goods and services, can be made freely either in the national currency (RON) or in foreign currency (art. 3 para. (2) of Regulation).

The regime of non-residents is shaped by four aspects, provided in the regulation by art. 4 (Chapter 2, Section III), as follows:

- they have the right to acquire, to own and to use financial assets expressed in foreign currency and in national currency (RON);
- the amounts in national currency (RON) and in other marketed currencies owned by non-residents can be converted by the intermediary of the currency market;
- non-residents can open and keep accounts in foreign currency and in the national currency (RON) at credit institutions;
- they can repatriate and transfer the financial assets owned.

As for residents, the Regulation provides in art. 5 (Chapter 2, Section IV) as follows:

- they have the right to acquire, to own and to use financial assets expressed in foreign currency;
- the amounts in national currency (RON) and in marketed currencies owned by residents can be converted by the intermediary of the currency market;
- the residents can open accounts in foreign currency and in the national currency (RON) at credit institutions and to other institutions assimilated to them.

EUR – single currency

EUR is a single currency, adopted by some of the Member States of the European Union which form together the EUR area. The EUR currency was introduced in 1999, thus becoming the official currency of eleven Member States, replacing the former national currencies.

EUR – the European single currency – was introduced in two stages:

- since 1999 it was used as virtual currency to make some payment operations which did not involve bank notes and coins;
- since January 2002 it was introduced as coins and bank notes.

Not all Member States made the passage to the EUR currency, most of them not accomplishing all the criteria established in order to set the single currency.

The introduction of the single currency is a measure which contributes to supporting the single market.

By the introduction and use of the single currency, they wished to obtain some economic advantages: increase of price transparency, elimination of exchange rate costs, launch of the mechanisms of the European economy, easing of the international commerce and reinforcement of position of the European Union on the international stage⁵.

The passage to the single currency also had some disadvantages, such as bearing with transition costs and passing through some economic shocks⁶.

They identified a series of effects produced by the introduction of the single currency. Among them, we remember:

- improvement of the functioning of the European single market;
- stimulation of imports and exports of national and international companies;
- increase of the degree of competitiveness between the local business enterprises and those from other Member States of the European Union;
- increase of exchanges between the Member States of the European Union;
- increase of the degree of employment and reduction of unemployment;
- strengthening of the European identity at worldwide level.

⁵ EU, Euro Area; http://ec.europa.eu/economy_finance/euro/index_ro.htm [accesed: 15.10.2016].

⁶ N.C. Aniței, R.E. Lazăr, *Drept bancar și valutar (Banking and currency law)*, Universul Juridic, Bucharest 2011, pp. 196–197.

Currency market

The currency market is a must, its existence allowing all natural and legal persons the free access to currency operations and transactions based on demand and offer.

The currency market is deemed to designate the totality of relationships arising between banks, between banks and their clients, regarding purchase and sale of currency in order to regulate the payments and collections occurring in the process of the economic exchanges⁷.

The currency market allows the interested persons to make a transfer of the purchase power from a country to another, to obtain or to provide with a credit for transactions specific to international commerce, and to minimize the exposure to the risks resulted from the modification of the exchange rate⁸.

Thus, the currency market accomplishes three functions:

- the transfer of the purchase power;
- granting some credits;
- minimization of currency risk.

The currency markets can be classified in particular and in secondary currency markets.

Particular currency markets are those on which they market convertible currencies. Convertible currencies are those that can be exchanged freely into other currencies at the market rate.

Secondary currency markets are those on which they market non-convertible currencies. Non-convertible currencies are those that cannot be exchanged freely into other currencies at the market rate⁹.

A clear distinction has to be made between the national and the international currency markets.

The national currency market is made up of the totality of relationships created between natural and legal persons concerning the sale and purchase of foreign currencies, the institutions specialised in such operations, and the rules and regulations facilitating the accomplishment of such transactions¹⁰.

In this regard, the notion of interbank currency market was shaped– the market on which they make currency transactions by intermediaries and by the National Bank of Romania (in capacity of supervision institution).

⁷ *Tranzacții internaționale. Politici, tehnici, instrumente (International Transactions. Policies, techniques, instruments)*, ed. I. Popa, Recif, Bucharest 1992.

⁸ L. Goloșoiu, *Fundamente și practici ale regimului valutar (Basics and practices of the currency regime)*, p. 14; <http://ligiagolosoiu.ro/content/MVII/capII.pdf> [accessed: 16.10.2016].

⁹ N.C. Aniței, R.E. Lazăr, *op. cit.*, pp. 172–173.

¹⁰ L. Goloșoiu, *op. cit.*

The intermediaries are the credit institutions authorised to operate in Romania which act on the market within the limit of their object of activity. Such institutions can conclude currency transactions both on their behalf and into their own account, and on the clients' behalf and accounts¹¹.

The international currency market includes the demand and offer foreign currency at international level, respectively the national currency markets on which such transactions are allowed.

The main differences between the national and the international currency market can be found as follows:

- while on the national currency market, the banks make foreign currency sales and purchases against the national currency, for the international currency market, the same banks carry out operations whose object is a currency which is foreign both for them and for the partner of such operation;
- on the national currency market, the exchange rate stays unmodified during a working bank day, while on the international currency market, the exchange rate for the transactions made is under a continuous change.

The operations carried out on the currency market can be classified as follows:

- according to their nature:
 - time operations – by which they make purchase or sale of amounts in foreign currency with immediate or at 48 hours assignation of the currency;
 - demand operations – by which they make purchase or sale of amounts in foreign currency based on delivery of the amounts at a future term and at a specified rate;
- according to the goal aimed:
 - arbitration operations – consisting in purchase or sale of foreign currency, sometimes at the same time from the currency markets in order to protect against fluctuations of currency rates and to obtain gains;
 - speculation or covering operations – which suppose the intervention of an operator on the currency market in order to make profit from the differences of currency rates;
- according to the degree of complexity:
 - simple operations;
 - swap operations – which suppose the combination of two simultaneous and opposed currency operations, one of sale and one of purchase, at two different maturities¹².

¹¹ *Ibidem*.

¹² N.C. Aniței, R.E. Lazăr, *op. cit.*, pp. 206–208.

Virtual currency

Recently, the Court of Justice of the European Union stated in case C-264/14 *Skatteverket vs David Hedqvist* that virtual currencies represent payment methods coming under the category of “coins, bank notes and currencies used as legal payment method”.

Cryptocurrency is a virtual currency which entered the market in 2009. The crypto currency is not to be mistaken with the electronic currency, which is “an electronically stored monetary value, including magnetically, representing a receivable over the issuer, issued at the reception of the funds in order to make payment operations and which is accepted by a person other than the issuer of electronic currency”¹³. The virtual currency is, according to ESMA (European Security and Market Authority), “the virtual representation of the value, which is not issued by a central bank, credit institution or institution of electronic currency, and which can be used as an alternative to the legal currency in certain circumstances”.

Within the action plan to strengthen the fight against terrorist financing (2016), the European Commission proposed the definition of the cryptocurrency as “a digital representation of the value that is neither issued by a central bank or public authority, nor necessarily attached to a fiduciary currency, but is used by natural or legal persons as a means of exchange and can be transferred, stored or traded electronically”.

The cryptocurrency appeared due to the wish of existence and use of a payment instrument allowing anonymity and that should not be influenced by the financial policies of a state, as the value and transitioning of “fiat” classic currencies are exposed to the wish of some decision makers by the monetary policy they can adopt (*i.e.* the amount and the way of issuing of the currency, the regulation of its circulation, the value of a currency)¹⁴.

The central banks start paying more attention to cryptocurrencies as payment methods that started to have a rising weight on the monetary market. Considered as having increased risk, through the high fluctuations of the ratings and the use in operations related to organised crime and terrorism, the cryptocurrencies still have an ambiguous legal regime and are situated outside the clear supervision area¹⁵.

¹³ Art. 4 lit. f of Law 127/2011 on the activity of issuing electronic currency.

¹⁴ M. Ioachimescu-Voinea, *Posibilitatea impozitarii criptomonedelor potrivit reglementarilor legale actuale*; <https://www.juridice.ro/570360/posibilitatea-impozitarii-criptomonedelor-potrivit-reglementarilor-legale-actuale.html> [accessed: 20.05.2019].

¹⁵ D. Constantin, *Criptomoneda, subiectul Colocviilor Juridice BNR (Cryptocurrency, subject of Legal Conventions of BNR)*; <https://jurnalul.antena3.ro/bani-afaceri/economia/criptomoneda-subiectul-colocviilor-juridice-bnr-803347.html> [accessed: 16.10.2016].

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Abstract

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Key words: currency, monetary policy, virtual currency, central bank, credit institution