



Cryptocurrencies: the kryptonite of the Labour Code

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Is it possible today to pay employees in cryptocurrencies and if so, within what legal framework?

In an era of technological revolution in the world of finance brought about by the emergence of the **blockchain and cryptocurrencies** on the market, more and more companies worldwide are now considering the possibility of paying their employees through this new medium of exchange.

Indeed, the implementation of a cryptocurrency payment system is undeniably an **axis of strategic development** for companies in certain specialised sectors such as finance, gaming, etc.; it is also a key and attractive criterion for the upcoming generations who are showing a strong and growing interest in the subject.

Obviously, France is not immune to the phenomenon either. It is however, a country that perhaps faces stricter **restrictions** than in other countries, insofar as the implementation of the regulations never in place today, never took into consideration the technological revolution and **technological development** of cryptocurrencies in terms of labour law.

Nevertheless, there are opportunities for companies to use cryptocurrencies as a method of remuneration provided, they ensure compliance with certain rules in order to reduce the risk of litigation in the future.

It should be remembered that the social law in France was designed with the protection of the employee (considered as the “weaker” part in an employment relationship) in mind. Furthermore, due to the fundamental nature of basic support and maintenance that remuneration provides the employee as a return on his or her work, it is critical that certain guarantees are established.

Can the use of cryptocurrencies be considered in the payment of a salary?

Today in France, it is legally complicated to consider paying a salary in cryptocurrency, given the following strict legal principles:

- **The requirement of a minimum wage to be respected:** in addition to the minimum wage which is the general legal basis for remuneration, annually-revised minimum agreements are also set with a hierarchical precedence within companies and/or the branches of an activity.
- **Legality of the currency of payment:** wages must be paid in euros being the only legal currency in France¹. It is possible to set the amount in a foreign currency, but this remains a complicated exercise from a practical point of view as the amount will necessarily have to be converted into euros according to the official exchange rate in force on the day of payment of the salary².
- **The public policy prohibition of wage indexation clauses:** clauses indexing wages to the minimum wage and the general level of prices, the general level of wages, or the price of goods, products, or services unrelated to the activity of the company are void³.
- **The general principle of equal pay for equal work,** allowing employees to benefit from the same pay and benefits as their colleagues in the same situation and offering them social protection in the event of any difference in treatment which cannot be justified by objective factors.

¹ Article L. 111-1 of the Monetary and Financial Code

² Cass. soc. 3 April 1990 no. 87-40.003

³ Articles L. 3231-3 of the Labour Code and L. 112-2 of the Monetary and Financial Code



As a consequence of the above, it follows that all remuneration must:

- have a minimum, known, fixed and non-random amount,
- be paid in legal tender.

Taking into account the volatility of the value of crypto-currencies and their non-recognition as legal tender in France - unlike El Salvador, which was the first country to adopt the Bitcoin as a legal tender – such a method of remuneration can only be a direct breach of the current social regulations in France.

Could there be recourse to the use of the Stablecoin?

The position is not as clear-cut for stablecoin tokens, which are cryptocurrencies based on the value of another asset (most of which are backed by fiat currency). By their very definition, stablecoins solve the problem of the randomness of the value of traditional cryptocurrencies, which are outside any legal framework. The European Central Bank (ECB) is currently working on a project for an official stablecoin, **the digital euro**⁴. The study phase was launched in autumn 2021 and should last two years. This intermediate solution would allow secure digital transactions free of financial instability.

While waiting for a favourable evolution of the legislation on the subject which should take place in the near future given the global craze of cryptocurrencies, any substitution of the euro for the payment of salaries in France is for the time being difficult to envisage in a framework other than that permitted by the digital euro.

It cannot however be said at this time, that the payment of employees in France by cryptocurrency, is inconceivable.

The tight restraints set by the French Labour Code do not prohibit certain freedoms in the employment relationship. The existing armada of legal protection in social matters focuses mainly on the more essential elements of the employment contract such as salary, duties and working hours.

It is not impossible therefore, to imagine the implementation of some kind of remuneration in a cryptocurrency, which without touching the basic salary (understood as the direct counterpart of an employee's work) would be **decorrelated** from the work relationship and would complement it only.

Cryptocurrency as a new incentive for employees?

In short, the use of cryptocurrency would be more of an instrument to retain employees than a new way of remuneration in itself: a payment in cryptocurrency should not be made in direct exchange for work done (i.e. the compensation for an obligation), but it could be considered for the allocation of various advantages to employees (i.e. a benefit).

In practice, payment in cryptocurrency could be envisaged for example for exceptional bonuses, the very nature of which escapes any legal framework as:

- there is no defined award criteria;
- the amount is freely decided by the employer;
- no acquired right to such a payment is acted;
- there is no formalisation (no mention in the employment contract or in the conventional texts applied in the company).

However, it will be essential to be able to justify the exceptional nature of the bonus and the absence of any link with an element of a work-related obligation of the employee.

As for the various existing measures in place for correlating employees with the results of the company (savings plans, profit-sharing, employee shareholding), **the implementation of a policy of profit-sharing in cryptocurrency according to a similar model, could also be envisaged i.e.** of an optional and collective nature⁵, according to the principle of non-substitution to the salary, and with an acceptance of financial risk, within certain limits.

Such solutions would be of greater significance for those companies working in related sectors, where they could more easily, and at a lower cost, include the implementation of such incentives directly in relation to their core business.

⁴ Proposal for a Regulation of the European Parliament and of the Council on crypto-asset markets

⁵ Except for profit-sharing in companies with more than 50 employees

Nevertheless, one major issue does need to be addressed: the social regime for benefits paid in cryptocurrency.

Logically, the regime should be that related to the benefit in question: the exemption from social security contributions for employee savings products subject to certain conditions, as well as the inclusion in the base for social security contributions within the meaning of Article L.242-1 of the Social Security Code for amounts treated as due remuneration (particularly in the case of exceptional bonuses).

However, to mention social security contributions automatically implies an intervention by the URSSAF and the inclusion of such in an established pay slip.

The problem of the processing of cryptocurrency by the social organisations and the subsequent translation of this onto payroll documents is therefore raised. A prior conversion into euros of any such amounts will obviously be indispensable given that no dedicated processing method for cryptocurrencies exists in these bodies in France today.

Special attention should be paid to the legal system which allows payment in cryptocurrency. Although it would not be necessary to touch the economics of the contract, nor to obtain the prior agreement of employees, the latter cannot in any case whatsoever,

have a payment in cryptocurrency imposed on them, and this would have to remain optional. Moreover, in the absence of a defined legal framework, it is essential that careful thought is given to the development of a payment method that complies with the principles laid down by French labour law, in order to limit risks in the case of litigation. Where there are social partners, they should be involved in any consultations or negotiations (e.g., for those companies which are subject to mandatory annual obligations).

To conclude, it could therefore be possible today and under certain conditions, for companies to consider paying additional compensation (or implementing a profit-sharing policy) in cryptocurrency in order to attract talent and build employee loyalty.

In such a context, an equally delicate question would inevitably arise with regard to the current tax legislation and notably the taxation methods applied to the beneficiaries of (i) any supplementary remuneration received in cryptocurrency and (ii) any income generated in cryptocurrency by this supplementary payment depending on how this income is then used.

Our team



Mailys Tixier

Attorney-at-Law – Manager
Employment Law & HR engineering
E: MTixier@avocats-gt.com
T: +33 1 41 16 27 33



Ronan Journoud

Attorney-at-Law – Manager
Corporate & Transaction tax
E: rjournoud@avocats-gt.com
T: +33 1 41 16 27 18

Grant Thornton Société d'Avocats

Neuilly-sur-Seine office

29, rue du Pont
92200 – Neuilly-sur-Seine, France
www.avocats-gt.com

Lille office

91, rue Nationale
59045 – Lille, France
www.avocats-gt.com



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