



CIVIL LEGAL ISSUES OF CRYPTOCURRENCY TRANSACTIONS IN THE PROVISION OF DIGITAL SERVICES

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Article history:	Abstract:
Received: February 7 th 2023 Accepted: March 1 th 2023 Published: April 10 th 2023	In turn, it is important to review the laws and legal documents of developed countries that have advanced in the field of digital financial services aimed at regulating this sector. The existence of transactions with cryptocurrencies in the field of digital financial services today, and the fact that this practice is increasingly covering financial relations, today requires conducting research on this issue. In particular, the world is interested in the question of how to regulate the rights and obligations arising from trading or money exchange between users of cryptocurrencies via the Internet. This situation requires legal support for the movement of cryptocurrencies in financial transactions and their use by individuals. Cryptocurrencies raise many questions about these legal issues.
Keywords: integration, technological revolution, financial technology, cryptocurrency, fintech, crypto-assets, material goods, personal money, bitcoin, tokens, utility tokens and investment tokens.	

The emergence and rapid development of financial practice with cryptocurrencies based on blockchain technology has become a clear problem for the international-financial-legal order¹.

On the one hand, it can be assessed that the new digital technology has the potential to have a beneficial effect on the economy, an attractive opportunity to attract investment to the financial system, and a way to avoid unnecessary tools in calculations.

On the other hand, the conclusions of the research conducted by the researchers show that the use of crypto-assets in criminal activities with the help of this financial practice recognized as new², the creation and organization of financial pyramids, the weakening of the state's influence in the financial system and thereby creating a risk that has an obvious negative impact³. However, in recent years, despite the presence of obvious risks, international financial institutions have been trying to integrate the

cryptocurrency financial device, accept it as it is, and develop existing regulatory mechanisms against them.

These actions are carried out by various integrated structures and their supporting states. Supporters of this practice have very carefully set themselves the goal of introducing norms into the legislation of some countries to create a legal regulatory system for crypto-assets. In the implementation of this goal, there is a desire to adopt documents of a recommendatory nature, to summarize the results of virtual financial practice, to develop a step-by-step regulatory system on this basis, and to develop its legal basis, that is, laws and legal norms.

In this way, the implementation of the practice with certain financial assets in an abstract way creates problems of its legal regulation and development of its own definition. Therefore, publishing a spelling dictionary related to the subject under study was the first task undertaken by the FATF in 2014. An important aspect of this is that the definition of concepts related

¹Zdes i dalee v nastoyashchem paragraphe sm.: Lifshits I. (2021) Cryptocurrencies in the Regulatory Field of International Organizations. In: Ashmarina S., Mantulenko V. (eds) Current Achievements, Challenges and Digital Chances of Knowledge Based Economy. Lecture Notes in Networks and Systems, vol. 133. Springer, Cham.

²Foley, Sean and Carlsen, Jonathan R. and Putnins, Talis J., and Bitcoin: How Much Illegal Activity Is Financed Through Cryptocurrencies?

(December 14, 2018). Review of Financial Studies, Forthcoming. Available at SSRN: <https://ssrn.com>

³Katarzyna, S. Cryptocurrencies: Opportunities, Risks And Challenges For Anti-Corruption Compliance Systems Warsaw School Of Economics. -P.12.



to cryptocurrencies, developed at the level of international institutions, was first given by an anti-money laundering body.

Today, virtual currency is a digital representation of value that is internationally recognized, and by its very nature, a currency that can be digitally sold, a medium of exchange, a unit of value, or a store of value exists in virtual practice, but has not been recognized as legal tender in any jurisdiction.

Given this definition, taking into account the numerical characteristics of the object and its usual features as a currency, it does not recognize it as a means of payment due to the fact that it is not approved by the state. Cryptocurrency is defined by the FATF as "decentralized convertible virtual currency based on a mathematical algorithm, protected by cryptography."⁴

Also, digital asset means "property in electronic form, the creation and use of which is carried out using digital technologies." A digital token (token) is "a type of digital asset, which is an entry in the list of transaction blocks (blockchain) and is accepted as a means of exchange by storing a certain unit of account or its value using another distributed database."⁵

The authors of the study, conducted by the Cambridge Center for Alternative Finance, note that there is currently no single recognized term in relation to cryptocurrency. In practice related to cryptocurrency, the terms "virtual currency" or "digital currency" are used synonymously by its regulator.⁶ In June 2019, the FATF issued "Guidelines on Virtual Assets and a Risk-Based Approach". In addition, in October 2018, this organization published recommendations on combating money laundering and terrorist financing, which is one of its main documents.

In accordance with paragraph 15 of the recommendations set out in these regulations, countries' FA service providers should ensure that ML/SFT are regulated, licensed or registered in order to comply with the measures taken by the FATF.⁷

A corresponding amendment was enshrined in a UN Security Council resolution that called on all states to adhere to the comprehensive international standards enshrined in the revised 40 Recommendations. Fukioko also emphasized the intention to apply the recommendations of the FATF on virtual asset related providers at the mutual meetings of the heads of finance ministries and central banks of the G-20 countries.⁸ "property", "income", "funds", "funds and other assets" or other "relevant value" that conveys the most common meaning of virtual assets, as defined in the explanatory notes⁹ should be considered as such, and they should not be used to combat money laundering. In addition, the recommendations require service providers to depersonalize participants in virtual currency settlements, which in turn deprives cryptocurrency transactions of key benefits.

The Financial Stability Board (FSB) examined the impact of cryptocurrency on global financial stability in 2018¹⁰. According to this council, due to the small size of the market, crypto-assets do not pose a threat to global financial stability. But it requires specific measures from the regulators, the main conclusion of the report is that such assets, lacking the main characteristics of an independent currency, are not a common means of payment, store of value and unit of account. Other Financial Stability Board (FSB) publications review regulatory approaches to crypto assets by 25 countries and 7 international financial institutions¹¹ highlighted.

Also, the International Organization of Securities Markets (IOSCO) ensures the development of methodological documents related to trading platforms with crypto-assets¹². It is interesting that the foundation of this organization, which is the creator of global standards in the field of regulation, has not yet published a general guide for the most important element of the virtual asset transaction process - the initial offering of cryptocurrency (Initial Coin Offering).

⁴FATF Report Virtual Currencies Key Definitions and Potential AML/CFT Risks, June 2014. -P.4.

⁵Cryptocurrency and blockchain are attributes of the new economy. Eurasian Economic Commission. M., 2019. Sm. site Eurasian Economic Commission. S. 69-71: <http://www.eurasiancommission.org/ru/nae/news/Pages/22-07-2019-1.aspx>

⁶Global Cryptoasset Regulatory Landscape Study, Apolline Blandin, Ann Sophie Cloots, Hatim Hussain, Michel Rauchs, Rasheed Saleuddin, Jason Grant Allen, Bryan Zhang, Katherine Cloud, Cambridge Center for Alternative Finance, University of Cambridge, Judge Business School, https://www.jbs.cam.ac.uk/fileadmin/user_upload/research/centre_s/alternative-finance/downloads/2019-04-ccafglobal-cryptoasset-regulatory-landscape-study.pdf

⁷FATF (2012-2019), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France. -P. 15: www.fatf-gafi.org/recommendations.html.

⁸Communiqué G20 Finance Ministers and Central Bank Governors Meeting Fukuoka, Japan, June 9, 2019. Para. 13: <http://www.g20.utoronto.ca/2019/2019-g20-finance-fukuoka.html>

⁹FATF (2012-2019), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France. -P.70.

¹⁰Financial Stability Board, Crypto-asset markets Potential channels for future financial stability implications 10 October 2018 <https://www.fsb.org/wp-content/uploads/P101018.pdf>

¹¹Financial Stability Board, Crypto-assets regulators directory, 5 April 2019. <https://www.fsb.org/2019/04/fsb-publishes-directory-of-crypto-assets-regulators>

¹²International Organization Of Securities Commissions, Issues, Risks and Regulatory Considerations Relating to Crypto-Asset Trading Platforms, Consultation Report, CR02/2019, May 2019: <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD627.pdf>



As part of such offers, the issuer collects a large amount of funds for the placed cryptoassets from many investors. The relevant section of the IOSCO website contains only a few dozen documents. In particular, several documents are being accepted by the regulators of different jurisdictions (UAE, Argentina, Australia, Canada, China, France, Germany, Italy, USA and other countries).¹³.

According to the researcher P. Valente, the first of the institutions of the European Union to officially solve the problem of virtual currencies was the European Central Bank, which in its 2012 report pointed to the lack of legal regulation as a characteristic of such currencies.¹⁴. In 2014, the European Banking Authority published its opinion, which proposed a number of measures to prevent the use of virtual currency for illegal activities, deanonymization of transactions (data anonymization), as well as to ensure the same regulation of cryptocurrency transactions as providers. Financial services i.e. prohibition of market manipulation, introduction of minimum capital requirements, etc.¹⁵.

A 2019 report by the European Bank defines cryptocurrencies as "a private asset that is held or relies for part of its intrinsic value primarily on cryptography and distributed ledger technology" and that cryptoassets that provide access to a product or service include exchange tokens, investment-grade tokens, and other tokens¹⁶.

A 2019 report by the European Central Bank defines cryptoassets as not representing the financial claim or liability of any entity.¹⁷, comes to the conclusion that

The European Banking Authority's reports generally state that crypto-assets are outside the scope of financial services regulation in the EU, leading to different approaches to the legal regime of transactions with such assets in member states. Such differences may hinder the functioning of the EU single market, where each participant has equal rights¹⁸. The European Central Bank notes that with the current regulatory infrastructure, cryptocurrencies cannot be included in the settlement system. Because they are not classified

as securities, the existing system of capital requirements for banks and investment companies is not adapted for cryptoassets. However, due to the small distribution of related transactions, the risk to financial stability is still considered insignificant.

According to the recommendation of the European Securities and Markets Authority, the legal regulation of crypto-assets requires a common approach of the European Union and that crypto-assets should be classified as financial instruments in some cases and be subject to an appropriate procedure for their circulation, including in relation to ICO regulations. However, since the European Union's legal instruments have not been created for crypto-assets, national regulators face difficulties in interpreting and applying such assets. Certain types of cryptoassets are not regulated by the financial instruments market, and investments in these assets pose significant risks for investors.¹⁹.

Another problem of regulation of relations related to these financial assets is the issue of taxation of financial operations carried out with cryptocurrencies. In 2015, in the Hedqvist case, the Court of Justice of the European Union considered the tax treatment of the most popular cryptocurrency bitcoins in relation to exchange practices²⁰. The content of this court case is that David Hedqvist, intending to provide services for the exchange of traditional currency with the virtual currency "Bitcoin" through his firm, applied to the Tax Commission of Switzerland for clarification and received a preliminary decision to exempt the practice of cryptocurrency from value added tax. The Swedish tax authority appealed this preliminary ruling to the Supreme Administrative Court of Sweden, thereby sending a preliminary request to the Court of Justice of the European Union for the interpretation of the EU Directive on the common value added tax system.²¹. Referring to the report of the European Central Bank, the requesting court explained the legal definition of a virtual currency as "a type of digital currency that is not regulated when it is issued, controlled by its administrators and accepted by members of a certain virtual community."

¹³IOSCO website. <https://www.iosco.org/publications/?subsection=ico-statements>

¹⁴Piergiorgio Valente, Bitcoin and Virtual Currencies Are Real: Are the Regulators Still Virtual? INTERTAX, Volume 46, Issue 6 & 7, 2018. – P.544.

¹⁵EBA Opinion of virtual currencies, EBA/Op/2014/08, 4 July 2014. <https://eba.europa.eu/sites/default/documents>

¹⁶European Banking Authority Report, 9 January 2019. Report with advice for the European Commission on cryptoassets. -P.4. <https://eba.europa.eu/eba-reports-on-crypto-assets>

¹⁷European Central Bank, Crypto-Assets: Implications for financial stability, monetary policy, and payments and market infrastructures, No.

223, May 2019. –P.3. <https://www.ecb.europa.eu/pub/pdf/scpops/ecb.op223~3ce14e986c.en.pdf>

¹⁸European Banking Authority Report, 9 January 2019. Report with advice for the European Commission on cryptoassets. -P.15, 17.

¹⁹ESMA Advice, Initial Coin Offerings and Crypto-Assets, 9 January 2019, ESMA50-157-1391. <https://www.esma.europa.eu>

²⁰Judgment of the Court of 22 October 2015 Skatteverket v David Hedqvist, Case C-264/14, Published in the electronic Reports of Cases, ECLI:EU:C:2015:718.

²¹Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax // OJ L 347, 11.12.2006. -R.1-118.



Virtual currencies are similar to other convertible currencies in terms of their exact use in the world, but they differ from electronic money in that virtual currencies do not have the feature of exchange (denomination) with their actual monetary nominal value, as indicated by the relevant European Union directive. At the same time, the virtual currency bitcoin is not a tangible object, and therefore the transaction with it is subject to the service provision procedure and not the payment delivery procedure for the purposes of value added tax.²²

Thus, transactions involving the exchange of cryptocurrencies for payment into fiat money constitute a supply of services for the purposes of the VAT Directive.

However, such services are exempt from VAT as a practice in relation to currency, banknotes and coins used as legal tender.

The explanation repeatedly concludes that virtual currency has "no other purpose than to be a means of payment." The court takes into account the fact that bitcoin transactions can be carried out with deposits, current accounts, payments, transfers, loans, checks, securities and other transaction documents, and on these grounds strongly rejects the exemption from VAT.²³

For all its value, this court decision resolves the very narrow issue of taxation of exchange transactions with the currency token, bitcoin. The main problems of the procedure for taxation of many financial practices are payments in cryptocurrency for taxable goods and services, issues of taxation of financial practices with other types of tokens, including property and investment tokens, are not provided for in the court's decision. According to researchers, this decision only raises the issue of taxing transactions related to crypto-assets.²⁴

As of today, the legal regime of virtual currencies in the European Union is established only for the purpose of combating money laundering. Thus, based on the recommendations of the FATF, in May 2018, amendments were made to the directive of the European Parliament and the Council on the fight against money laundering in the financial system. It is

a provider of virtual currency and electronic wallet storage services²⁵ and defines his obligations. It was agreed to ensure the registration of suppliers, virtual and fiat currency exchange companies of the European Union member states, and identification of their managers and beneficial owners.²⁶

This situation leads us to the conclusion that this legal document of the European Union is an excellent confirmation of the FATF rules, which oblige all countries (integrated associations, if they have the relevant powers) to include provisions on virtual assets in their national legislation. Changing the legislation on combating the legalization of proceeds from criminal activities may lead to the mediation of the regulation of such financial assets in other areas of legislation. Thus, the European bodies of international financial organizations began to develop their approach to the regulation of virtual assets in the next 5 years according to their specialization. In the first place, the main problem points requiring immediate intervention were identified: including: it is necessary to determine the use of crypto-currencies for the legalization of criminal financial assets, the increase in the value of crypto-assets, the possibility of building financial pyramids, the risk of stock exchange practices and financial stability. It can be seen that states and integration associations are actively cooperating with international financial organizations to develop effective approaches to the regulation of cryptocurrencies, which will significantly reduce the risk of new technologies.

Thus, at the end of 2019, the expert committee of the European Commission, which developed recommendations on the regulation of FinTech (financial technologies) in the European Union, included close cooperation with the European regulator (European Supervisory Authorities and the European System of Central Banks) and international standard-setting organizations.²⁷ Thus, the subject of European integration, faced with the emergence of an unknown phenomenon in the form of transactions with virtual currencies, is gradually moving towards the goal of creating a system of legal regulation of the relevant transactions.

Analysts who have researched the field say that

²²Judgment of the Court of 22 October 2015 *Skatteverket v David Hedqvist*. Paras. -R.14-31.

²³Judgment of the Court of 22 October 2015 *Skatteverket v David Hedqvist*. Paras. -R. 54.

²⁴Kollmann, J. The VAT Treatment of Cryptocurrencies, *EC Tax Review* 2019-3. -P.170.

²⁵Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU, Art. 3 (18) (19) // OJ L 156, 19.6.2018. -R.43-74.

²⁶Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU, Art. 3 (18) (19) // OJ L 156, 19.6.2018. -R.74.

²⁷Expert Group on Regulatory Obstacles to Financial Innovation (ROFIEG), 30 Recommendations On Regulation, Innovation And Finance, Final Report to the European Commission December 2019. - P.23.



putting a decentralized financial asset, i.e. cryptocurrency, in a direct centralized order can be an insurmountable challenge.²⁸ Summarizing the role played by international financial standard setters and EU authorities, it is worth noting that they all approach cryptocurrency transactions with extreme caution. Although there is a lack of trust between the parties in this practice due to its nature, the negative aspects of this situation are not yet felt due to the insufficient distribution of deals. According to experts, although it is natural that the advantages of transactions based on blockchain technology seem to be overestimated, over time, the hype in the field of its application will decrease and the real benefits will become more obvious.²⁹

According to the research conducted, the main trend in the regulation of crypto-assets today is to put the practice of cryptocurrency under the control of regulatory bodies, to make anonymous persons public (deanonism) in conducting financial practices with them, to develop licensing, reporting, capital adequacy and liquidity standards. It should be introduced for professional market participants. These views are still awaiting legal resolution. The implementation of these views is definitely a product of incessant scientific research.

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²⁸Nabilou, H. How to regulate bitcoin? Decentralized regulation for a decentralized crypto currency // International Journal of Law and Information Technology. 2019. 27. -P.290.

²⁹Tredinnick, L. Cryptocurrencies and the blockchain // Business Information Review. 2019. Vol. 36 (I). -P.43