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CERTAIN FEATURES OF THE LEGAL REGIME OF CRYPTOCURRENCY TRANSACTIONS

Abstract. Purpose. The purpose of the article is to determine the peculiarities of the legal regime of cryptocurrency transactions based on the analysis of foreign experience and comparison of cryptocurrencies (virtual assets) with classical (fiat) money and e-money and make proposals for their improvement. **Research methods.** The use of classical methods and techniques of scientific cognition, in particular, analytical and synthetic, comparative, historical and legal, economic modelling, systemic and structural, and others, allowed substantiating the conclusions. **Results.** The article analyses scholarly views and certain provisions of legislation on cryptocurrency transactions and identifies the peculiarities of the legal regime of such transactions compared to the legal regime of transactions with classical (fiat) and e-money. Cryptocurrency transactions are characterised by anonymity and irreversibility, and the State has no levers of influence and control over them. **Conclusions.** The adoption by the legislator of the Law of Ukraine "On Virtual Assets" is supported in the article. It is indicated that the adoption of the necessary legislative acts to develop the provisions of this still inoperative law will allow cryptocurrency market participants to legally carry out their activities and clearly understand their place in the market and, at the same time, be aware of their rights and obligations, and the availability of a strong legal framework will effectively protect the rights of users and investors from criminals. The need to adopt the draft law on amendments to the Tax Code of Ukraine regarding the taxation of transactions with virtual assets has been confirmed. Once the draft law is adopted, it will be the turn of market regulators (primarily the NBU) to issue their own bylaws, orders, guidelines, clarifications, letters, etc. that will clearly regulate the activities of all participants in the cryptocurrency market. The importance of applying foreign experience in legitimising cryptocurrency transactions is confirmed in the article.

Key words: cryptocurrency, virtual assets, bitcoin, electronic money, legal regulation, economic activity, Tax Code of Ukraine, Civil Code of Ukraine, Commercial Code of Ukraine, cryptocurrency "mining", the Law of Ukraine "On Virtual Assets", foreign experience.

1. Introduction

Since 2007, the global financial market has seen the emergence of another instrument – virtual money (assets) or cryptocurrency. This instrument became popular and attractive almost immediately. Cryptocurrencies are an alternative means of payment, investment, and savings to the classic currency. It can become the basis for shaping a new global financial system. However, there are still gaps in the legal framework for cryptocurrency circulation in Ukraine and many countries around the world. This is a problem for ordinary citizens, economic entities, and domestic and foreign investors. Accordingly, it is also a problem for the State, which is objectively interested in investment in the face of war and a significant economic downturn. However, in order to attract investment, the State must ensure

the protection of investors' interests, as all cryptocurrency transactions – buying and selling, exchanging, even depositing – carry significant threats and risks, in addition to the possibility of getting rich quick. A few years ago, researchers named and characterised various technological, legal, and economic-legal risks, including the one caused by the lack of the legal regulation of cryptocurrency transactions, the NBU's recommendation not to conduct such transactions, the reliance on the owners of cryptocurrency wallets to protect their legitimate interests, the prohibition of their use by virtue of several provisions in the legislation and the possibility of applying liability measures not explicitly mentioned (Derevianko, 2017, p. 38). Other risks in cryptocurrency transactions include purely criminal risks associated with theft and fraud on the Internet. The

existing judicial practice in Ukraine is not sufficient for the legal protection of cryptocurrency transactions by Ukrainian residents. However, relatively recently, the Law of Ukraine "On Virtual Assets" has been adopted to regulate relations with cryptocurrency in Ukraine, including the protection of cryptocurrency unit holders by the state (On Virtual Assets, 2022). However, the said Law did not enter into force and was not signed by the President of Ukraine, as it contains a prerequisite for making appropriate amendments to the Tax Code of Ukraine.

The above necessitates the study of the legal regime of cryptocurrency transactions and the search for ways to improve the relevant relations.

Literature review. The issue of legal support for relations with cryptocurrency transactions in Ukraine has been studied by various scholars and practitioners over the past decade and a half. Regulation of relations in the virtual asset market in Ukraine should be based on analogues that already exist in some other countries, but also take into account the peculiarities of the Ukrainian civil, commercial, administrative and legal, as well as financial and banking systems. Representatives of legal and economic sciences have different opinions on the possibility of legitimising operations in the cryptocurrency market. Among them are Vinnyk (Vinnyk and al., 2022), Hrytsai (2023), Derevianko (2018), Kalachenkova and Dovhan (2022), Makurin (2020), Marchenko and Dombrovska (Marchenko and Dombrovska, 2023), Mohyl (Mohyl, 2023), Pochynok (Pochynok, 2023), Spilnyk and Yaroshchuk (Spilnyk and Yaroshchuk, 2020), and many others. However, despite the significant number of scientific works devoted to the relevant topic, the problem of determining the legal nature of virtual assets and their possible legitimisation is relevant and timely.

Purpose. Based on the above, the analysis of foreign experience, and comparison of cryptocurrencies (virtual assets) with classical (fiat) money and electronic money, the article identifies the specifics of the legal regime of cryptocurrency transactions and makes proposals for their improvement.

Research methods. The use of classical methods and techniques of scientific cognition, in particular analytical and synthetic, comparative, historical and legal, economic modelling, systemic and structural, and others, allowed to substantiate the conclusions.

2. Processes of legitimisation of cryptocurrency transactions

As mentioned above, Ukraine does not yet have any specific legislation on virtual assets. However, the Law of Ukraine "On Virtual

Assets" (On Virtual Assets, 2022) has recently been adopted, which will come into force after the relevant amendments to the Tax Code of Ukraine regarding taxation of transactions with virtual assets (On amendments to the Tax Code of Ukraine regarding taxation of transactions with virtual assets, 2022). In addition to the Tax Code of Ukraine, a significant number of other Ukrainian regulations must be amended. This may be done after the Law of Ukraine "On Virtual Assets" (On Virtual Assets, 2022) enters into force. We believe that amendments and additions should be made to the Commercial Code of Ukraine (2003), the Civil Code of Ukraine (2003), the Law of Ukraine "On Banks and Banking" (2000), Law of Ukraine On Currency and Currency Transactions, 2018, Law of Ukraine On Capital Markets and Organised Commodity Markets, 2006, Law of Ukraine On Financial Services and Financial Companies, 2021), the Law of Ukraine "On the prevention and countermeasures against the legalisation (laundering) of the proceeds of crime, the financing of terrorism and the financing of the proliferation of weapons of mass destruction" (On the prevention and countermeasures against the legalisation (laundering) of criminal proceedings, the financing of terrorism and the financing of the proliferation of weapons of mass destruction, 2019), the National Bank of Ukraine (the "NBU") Regulation "On the approval of the regulation on transactions with currency values", 2019 and other legislative acts.

It should be noted that the Code of Ukraine on Bankruptcy Procedures has already been amended and supplemented to recognise virtual assets as an object of bankruptcy proceedings (Code of Ukraine on Bankruptcy Procedures, 2018), as noted by Corresponding Member of the National Academy of Legal Sciences of Ukraine Kolomoiets, who proposed to recognise cryptocurrency as debtor's property for the purposes of bankruptcy proceedings and the Code of Ukraine on Bankruptcy Procedures, taking into account the market value of which measures to restore the debtor's solvency provided for in the rehabilitation plan may be implemented, as well as to enable the use of cryptocurrency in the liquidation procedure (Derevianko, Kolomoiets, Kolpakov, 2024, p. 658).

In the Ukrainian social context, there is a tangible and growing enthusiasm for legitimising cryptocurrency transactions. Cryptocurrencies are becoming increasingly preferred not only to facilitate international transactions, but also to meet the needs of the domestic market. The decentralised financial sector is showing strong activity, with cryptocurrencies being

recognised as a de facto medium of exchange in the Ukrainian social landscape (Marchenko and Dombrovska, 2023). Thus, the establishment of a coherent and comprehensive legal framework for cryptocurrencies becomes imperative to provide clarity, promote responsible use, and mitigate risks of various kinds. Legal clarity not only protects the interests of investors and users, but also ensures that the benefits of cryptocurrency integration are aligned with broader economic and regulatory objectives (Spilnyk and Yaroshchuk, 2020). Therefore, legal regulation of cryptocurrency relations that meets the needs of civil society should ensure the social orientation of the digital economy and stimulate the social responsibility of businesses in the digital sphere.

The Law of Ukraine "On Virtual Assets" defining the legal regime of cryptocurrency transactions is a positive development. However, the rulemaking work needs to be continued in the direction of legitimising and improving the legislation (the provisions of the Law of Ukraine "On Virtual Assets" have the main positive effect of legitimising the circulation of cryptocurrencies, while the nuances of regulating such transactions require a significant number of additions) (On Virtual Assets, 2022). Given Ukraine's European integration aspirations, Ukrainian legislation on cryptocurrency circulation should fully comply with European standards. For this purpose, it is necessary to permanently amend the said Law of Ukraine in accordance with the above recommendations. In addition, it is important to conduct an information campaign to raise public awareness about cryptocurrencies and the risks of cryptocurrency transactions, as well as about "safety precautions" when conducting financial transactions on the Internet. This will help people understand the potential risks associated with investing in cryptocurrencies (Hrudnytskyi, 2023). In his study of the formation of the cryptocurrency market in Ukraine, Mohyl also confirms that the market is developing rapidly, but lacks appropriate legal and regulatory frameworks, which increases the risks for participants (Mohyl, 2023). Makurin points out that if an organisation decides to use cryptocurrency to pay for certain goods, works or services and to account for such receipts, it is necessary to conclude an additional agreement and immediately determine the date of transfer of digital assets to fix the exchange rate (Makurin, 2020). The issues of financial monitoring of cryptocurrency transactions, income declaration, and tax payment remain unresolved and controversial. To improve the effectiveness of state regulation of relations in the cryptocurrency market, it is necessary to create a unified legislative and exec-

utive framework for regulating the activities of all market participants with a clear definition of the functions and tasks of financial regulators. In the absence of a unified methodological approach to the proper accounting of cryptocurrency transactions and operations with it, it seems quite reasonable to apply international accounting standards and recommendations developed on their basis for accounting for cryptocurrency as an intangible asset. Thus, the distinction between the recommended options for accounting for cryptocurrency as an intangible asset should be based on the purpose of its use by an entity (Mohyl, 2023).

Hrytsai believes that the formation of the legal framework in Ukraine can be divided into two stages – before the emergence of the relevant law and after its appearance in the form of the Law of Ukraine "On Virtual Assets", which introduced a number of legal definitions, classification and legal framework for their regulation at the legislative level, marking the beginning of the legitimisation of cryptocurrencies in Ukraine. In his opinion, the legal framework introduced by the Law of Ukraine "On Virtual Assets" can be summarised as follows. Virtual assets are an intangible good. They have the same legal nature as information or a literary work. They are not a means of payment and cannot be exchanged for property or services. The ownership of a virtual asset is confirmed by the possession of a virtual key, which is a set of technical means. Only a financial institution may provide services in respect of virtual assets backed by currency values. Participants in the virtual asset market are entitled to judicial protection. The NBU and the NSSMC (National Securities and Stock Market Commission) supervise the activities of service providers and apply enforcement measures (Hrytsai, 2023). This theory has a theoretical and practical basis and requires further research to justify the need for changes to the relevant Law of Ukraine "On Virtual Assets", thereby bringing it closer to the practice of the leading countries of the world where cryptocurrencies are recognised as an exchange.

3. Threats of cryptocurrency transactions and certain advantages of cryptocurrency over other means of payment and accumulation

Cryptocurrency transactions can be used to circumvent sanctions, withdraw funds abroad, legalise proceeds of illegal or dubious activities, etc. It is believed that cryptocurrency transactions are risky for the state, including its national security and defence. Therefore, it is important to actively improve the security components of the legal regime for cryptocurrency transactions.

An analysis of the characteristics of cryptocurrencies in terms of their key economic properties, including decentralisation and their anonymous nature, indicates that no other classical currency or commodity money (gold, silver, etc.) can compare with the reliability, security and immutability inherent in the blockchain technology underlying, for example, bitcoin. It is believed that the economic properties of cryptocurrencies, in particular their decentralised nature, contribute to their attractiveness as a new and potentially safer form of currency. At the same time, the legal and regulatory framework governing virtual assets, including cryptocurrencies, in Ukraine needs to change (Marchenko and Dombrovska, 2023). It can be assumed that the threat of potential competition between cryptocurrencies and the national currency (hryvnia) is a factor in restraining the recognition of cryptocurrencies as a means of payment in Ukraine. This is one of the risks of cryptocurrency circulation. This idea avoids immediate legal risks for the country's financial and economic system and ignores their main purpose – to serve as a means of payment alternative to fiat money. Therefore, it is advisable to recognise cryptocurrencies as a means of payment, which will make it possible to contribute to the state budget through appropriate legislative changes in terms of the legal status of cryptoassets (Kalachenkova, Dovhan, 2022).

When analysing the legal regime for the circulation of virtual assets in Ukraine, the following aspects should be taken into account:

- decentralised blockchain technology is partially implemented at the state level, but has not yet become widespread in government agencies;

- Ukraine has established the Ministry of Digital Transformation, a body that deals with the development of special legislation for the legal protection of digital asset owners;

- the main regulatory authority is the National Securities and Stock Market Commission (hereinafter referred to as the NSSMC) of Ukraine;

- the Ministry of Finance of Ukraine is responsible for financial monitoring of cryptocurrency transactions;

- when buying and selling cryptocurrencies outside of Ukraine and making a profit due to the price difference, the income is considered as "received from foreign sources" (Skarbyk, 2023).

In view of the above, work should continue on a comparative analysis of the legal regime of cryptocurrency circulation in foreign countries and Ukraine, identifying the differences between cryptocurrency, classic and electronic money, determining the benefits and risks

of using cryptocurrency by Ukrainian economic entities and government agencies in times of war, providing proposals for the legitimisation of cryptocurrency transactions, taking into account its advantages in martial law, etc.

We believe that after the legitimisation of cryptocurrency transactions, the issue of harmonising the provisions of Ukrainian legislation with the legislation of other countries will arise, as relations in the cryptocurrency market are multinational. The seller or buyer of cryptocurrency units in Ukraine does not know where their counterparty is physically located and what citizenship or nationality they have. Therefore, it is important to study foreign legislation regulating relations with cryptocurrencies. Foreign experience, once taken into account, may allow us to compare their achievements with the practical needs and realities in Ukraine.

Ukrainian researchers emphasise the need for co-regulation (involving the state and digital economic entities), technical regulation, including standardisation, as well as the search for effective means of regulating relations in the field of mining and the use of cryptocurrencies. The emphasis is placed on two components of the regulation of digitalisation relations – technical regulation, including standardisation, and regulation of relations in the field of mining and use of cryptocurrencies. The study proves the need to introduce legal mechanisms for regulating digitalisation relations, taking into account its duality (the presence of both benefits and risks), and proposes changes to the current legislation of Ukraine (Vinnyk and al., 2022).

4. The need to strengthen state control over cryptocurrency transactions

The legitimisation of cryptocurrency transactions poses a challenge for the state to ensure that all participants in the cryptocurrency market comply with the principles of legality, financial security and protection, provided they comply with legitimate rules and regulations.

Pochynok believes that special attention should be paid to such a subject of legal relations related to the circulation of virtual assets as cryptocurrency exchanges. The following cryptocurrency exchanges operate on the Ukrainian market: "KUNA, Exmo, BTC TRADE UA. As for currency exchangers, the most popular cryptocurrencies for exchange are Bitcoin, Ethereum and Litecoin. The regulation of cryptocurrency exchanges in Ukraine, as in most countries of the world, is limited to the level of their state registration, licensing, and permits. In particular, cryptocurrency exchanges in Ukraine operate as limited liability companies with the type of activity "computerisation consulting". There are currently no other mandatory rules for the operation

of cryptocurrency exchanges in Ukraine (Pochynok, 2023). At the same time, the entry into force of the Law of Ukraine "On Virtual Assets" is intended to change the current situation. First of all, the Law does not use the term "cryptocurrency exchange", but rather the term "service providers related to the billing of virtual assets" (On Virtual Assets, 2022). Having analysed this definition, we can conclude that the term "service providers related to the billing of virtual assets" covers the activities of cryptocurrency exchanges. Thus, the provisions of the Law are intended, among other things, to regulate the activities of cryptocurrency exchanges. The Law also establishes for the first time at the legislative level the mandatory state registration of legal entities for conducting cryptocurrency exchange activities, which can currently be carried out without appropriate registration (On capital markets and organised commodity markets, 2006). Ukrainian legislation on virtual assets applies to legal relations related to the circulation of virtual assets in connection with: the provision of services related to the circulation of virtual assets if the parties to such legal relations have a registered office or permanent establishment in Ukraine; the execution of a transaction subject to a virtual asset if the parties have determined the law of Ukraine to be applicable to the transaction as a whole or to a separate part of it; the execution of a transaction subject to a virtual asset if both parties of the transaction are residents of Ukraine; performing an action, the subject of which is a virtual asset, if the person who performs transactions with virtual assets in their own interests (the acquirer of the virtual asset) is a resident of Ukraine (Pochynok, 2023).

Having analysed certain provisions of Ukrainian legislation and the experience of foreign countries in the field of legal regulation of cryptocurrency transactions and crypto-exchanges, we can agree with certain conclusions regarding the proposal of directions and ways to introduce state control over this area in Ukraine:

1. due to the lack of regulation of the legal status of crypto-exchanges and the regime of cryptocurrency circulation, the state has no obligations;
2. the lack of a system of regulatory and legal regulation of the use of virtual assets and the existence of contradictions in approaches to defining the functions of cryptocurrencies lead to violations of the fundamental principles of the rule of law and the principles of its construction, where the rule of law plays a leading role;
3. it is necessary to develop a system of regulatory and legal regulation of the cryptocur-

rency market: legislative acts on the activities of cryptocurrency market participants; acts regulating the issuance of licences for the activities of crypto exchanges and crypto exchange operations; acts regulating the rights and obligations of professional participants in the cryptocurrency market; acts to control such activities; develop rules and standards for the provision of financial services in the cryptocurrency market and control over their compliance; a system of supervision over financial institutions participating in the cryptocurrency market;

4. it is necessary to ensure the implementation of international standards on cryptocurrencies defined by the Financial Action Task Force on Money Laundering (FATF) on approaches to risk assessments of cryptocurrencies and virtual asset service providers (NSSMC);

5. the legal status of crypto-exchanges and cryptocurrencies should be determined, and the main areas of their use should be regulated at the regulatory level (Levytskyi and al., 2023).

The laws that will be adopted in Ukraine to legitimise cryptocurrencies and regulate relations with them will have an impact on the state budget. We conclude that virtual assets should be characterised from the legal and technical points of view. The technical characteristics of virtual assets indicate that they are based on the interaction of information modules through the use of a single set of formats with an appropriate level of security and encryption of all transmitted data. From the legal point of view, it is advisable to establish: the essence of virtual assets, their types, scope of application, mechanisms for monitoring the use of virtual assets, as well as bringing to justice for violations of the procedure for using virtual assets (Bondarenko, 2023).

5. Conclusions

Legal regulation of relations in the virtual asset market is extremely important, as it allows to make this market civilized. The special nature of cryptocurrencies has determined the peculiarities of the legal regime of transactions, which are anonymous and irreversible, increased risk, complexity of state regulation and protection.

Adoption of the necessary legislative acts to develop the provisions of the adopted but still ineffective Law of Ukraine "On Virtual Assets" will allow market participants to operate legally and clearly understand their place in the market, while being aware of their rights and obligations. A strong legislative framework will help to effectively protect the rights of users and investors from criminals. Therefore, the most important step in the near future is the adoption of the draft law on amendments to the Tax Code of Ukraine regarding the taxation of transactions with virtual assets. Its entry

into force will be a trigger for the legitimisation and updating of the provisions of the Law of Ukraine "On Virtual Assets" and amendments to other legislative acts. Once the draft law is adopted, it will be the turn of market regulators (primarily the NBU) to issue their own regulations, orders, guidelines, clarifications, letters, etc., which, in turn, will clearly regulate the activities of all participants in the cryptocurrency market. Since the nature of virtual assets is characterised by rapid transnational transactions between users, it is necessary to consider and implement international experience in ensuring legal regulation of cryptocurrency transactions.

Prospects for further research in the field of legal sciences will include defining the legal essence of virtual assets, characterising and systematising their types, defining and clarifying the scope of application, proposing mechanisms for monitoring the use of virtual assets, and improving the mechanism for bringing to liability for violations of the procedure for using virtual assets, etc.

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ОКРЕМІ ОСОБЛИВОСТІ ПРАВОВОГО РЕЖИМУ ОПЕРАЦІЙ ІЗ КРИПТОВАЛЮТОЮ

Анотація. Мета. Ціллю статті є: на основі аналізу зарубіжного досвіду, порівняння криптовалют (віртуальних активів) із класичними (фіатними) грошима, електронними грошима визначити особливості правового режиму операцій із криптовалютою і зробити пропозиції щодо їх удосконалення. **Методи дослідження.** Застосування класичних методів і способів наукового пізнання, зокрема аналітико-синтетичного, порівняльного, історично-правового, економічного моделювання, системно-структурного та інших дозволило аргументувати висновки. **Результати.** У статті проведено аналіз поглядів дослідників, окремих норм законодавства на операції із криптовалютою, визначено особливості правового режиму таких операцій порівняно із правовим режимом операцій із класичними (фіатними) та електронними грошима. Операції із криптовалютою вирізняються анонімністю, незворотністю, держава не має важелів впливу і контролю на них. **Висновки.** Підтримано прийняття законодавцем Закону України «Про віртуальні активи». Вказано, що прийняття

необхідних законодавчих актів у розвиток положень цього допоки нечинного Закону дозволить учасникам ринку криптовалюти легально здійснювати свою діяльність та чітко усвідомлювати своє місце на ринку і при цьому бути обізнаними про права та обов'язки, а наявність потужної законодавчої бази дозволить ефективно захищати права користувачів та інвесторів від злочинців. Підтверджено необхідність прийняття проекту Закону про внесення змін до Податкового кодексу України щодо оподаткування операцій із віртуальними активами. Після прийняття законопроекту настане черга регуляторів ринку (у першу чергу – НБУ), які мають випустити свої підзаконні нормативно-правові акти, накази, вказівки, роз'яснення, листи тощо, які, у свою чергу, будуть чітко регламентувати діяльність усіх учасників відносин на ринку обігу криптовалют. Підтверджено важливість застосування іноземного досвіду під час легітимації операцій із криптовалютою.

Ключові слова: криптовалюта, віртуальні активи, біткойн, електронні гроші, правове регулювання, господарська діяльність, Податковий кодекс України, Цивільний кодекс України, Господарський кодекс України, «майнінг» криптовалюти, Закон України «Про віртуальні активи», зарубіжний досвід.

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