

THE CURRENT STATE OF THE LEGISLATIVE ENSURANCE OF THE MARKET REGULATION OF CRYPTO CURRENCY IN UKRAINE

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Purpose: conduct a review of the current state of regulation of the crypto market in Ukraine and express their views on the legal regulation of this institution in Ukraine. **Methods of research:** within the framework of European integration directions of development of Ukraine and improvement of development of the level of protection of the rights of persons, ways of improvement of economy, globalization, spread of IT technologies more and more. This directly influences the emergence of new financial institutions, tools and forms of interaction between people. With this rapid development, an analogue of traditional currencies, cryptocurrency, has emerged. Thus there is a need to study the features and trends of cryptocurrency development and regulation of the development of this system. **Results:** over the last 5 years, research on the crypto market has been conducted quite actively by economists. As for the lawyers of researchers, such scientists as Derevyanko B., Ustimenko V., Pashchenko K., Golubeva N., Grebenyuk M., Vorontsova S., Doronin I., Kovalchuk A., Stetsenko S., Solovyova A. have made a significant contribution to legal science in these matters. **Discussion:** today, as in many countries, the legal status of cryptocurrency is absent. At the same time, there is a «bold» introduction of the instruments of this market into the economy of Ukraine. Imperfect regulation and research on this crypto issue somewhat hinders the development of this sector and technology.

Keywords: crypto-currency; bitcoin; cryptographic; crypto participants; alternative methods of calculations.

Formulation of the problem. With in the European integration of Ukraine and areas of improvement of the level of protection of rights of ways to improve the economy, globalization, the spread of IT – Technology more and more. It directly affects the emergence of new financial institutions, tools and forms of interaction between people. Thanks to such a rapid development, an analogue of the traditional currencies – crypto currency. Thus, there is a need for the study of the peculiarities and trends of the development of cryptography and the regulation of the development of this system.

Analysis of recent research and publications. Over the past 5 years, research on crypto market has been conducted quite actively by economists. As for the lawyers of researchers, then such scholars as Derevyanko B.V., Ustimen-

ko V. A., Paschenko K. L., Golubeva N. Y., Grebenyuk M. V., Vorontsova S. V., Doronin I. M., Kovalchuk A. S., Stetsenko S. V., Solovyova A. B. made a significant contribution to the legal science in these matters.

Problems not resolved before. Today in Ukraine as in many countries, there is no legal status of crypto currency. At the same time, the "timid" implementation of the instruments of this market in the Ukrainian economy operates. Imperfect legal regulation and research of this crypto-issue somewhat inhibits the development of this sector and technology.

Goal. To review existing state regulation crypto market in Ukraine and express own views on the legal regulation of this institution in Ukraine.

Presentation of the main material. It is estimated that as of today there are more than 2 thousand types of crypto currency, the most popular is Bitcoin.

The total capitalization of the market of Bitcoin is estimated at 130 billion. US dollars, but aggregate amount trades such digital assets reaches 2.6 billion US dollars. So it is quite strange situation in which crypto currency became indispensable part of social relations, financial tools, business, at the same time no legal regulation. As it shows world practice, crypto currency is gaining more and more popularity worldwide, the ban of its development is technically impossible and economical inappropriate and therefore legal regulation of crypto currency is only a matter of time.

Today in Ukraine as in many countries, there is no legal status crypto currency. Crypto currency (digital currency) is special electronic pay tool whose course is supported only by demand and supply. Such electronic money is not regulated not one of the state legal systems. The main feature of the digital currency is its decentralization. Crypto currency is dispersed in Internet and does not have centralized management. Crypto currency does not mean the obligations of its owner, payments within the system of a certain crypto currency could be carried out absolutely anonymously, that for payers and recipients of crypto currency mean the complete absence of control from any third parties, including government agencies. The main platform of occurrence of crypto currency was a kind of protest against the fiscal domination of the state and dependence on central banks. Today, among politicians and academics, there has been a debate about the advantages and disadvantages of these technologies. And the legislator has only 2 ways of developing the following events: legal recognition and consolidation in the norms of the national legislation of crypto business or imperative prohibition of crypto technologies.

Today there are several different types for as of today, according to Part 1 of Art. 99 of the Constitution of Ukraine, the monetary unit of Ukraine is the hryvnia. According to Clause 3.3 of Art.3 of the Law of crypto currencies: Bitcoin (BTC), Litecoin (LTC), Peercoin (PPC), QuarkCoin (QRK), Worldcoin (WDC) and other. But Bitcoin is the most widespread and most expensive cryptocurrency in the world and in Ukraine. It has the advantages of decentralization, anonymity of all transactions, trade agreements are conducted only

in electronic format. Get Bitcoin is possible by the operation of purchase and sale through online exchanges by payment for goods and services directly or through the purchase from another owner. Also, one of the main features of this currency is that it is protected from inflation, since the emission procedure is programmed to reduce the number of virtual money in circulation [1, p. 635].

However, the drawbacks of cryptocurrency also deserve some attention. They are a large percentage of the commission, lack of state guarantees, and as a result, they are not always profitable to pay. And it is almost impossible to prove that it is from your e-wallet - fraudsters have stolen crypto money.

Regarding the transition of the economy to cryptocurrencies, the main problem is that the system is not very stable course. There are no centers of influence anywhere, so the course is unpredictable globally. Technically, this can be stabilized if blockchain technology is implemented nationwide. Technology will be an effective resource that will need support in cryptocurrency. There is a good idea that cryptocurrency protocol will be taken as the basis, with some centralization but full transparency for all participants of the process. This will be much more efficient than the existing system [3].

In turn, the financier and managing partner of the company Capital Times Eric Naiman believes virtual money is the currency of the future. Bitcoin became part of it real economics, banks could issue loans under the pledge of Bitcoins. There fore, the collapse of crypto currency may provoke credit crisis. Also Naiman stressed on the fact that at present market capitalization of As of today, according to Part 1 of Art. 99 of the Constitution of Ukraine, the monetary unit of Ukraine is the hryvnia. According to Clause 3.3 of Art.3 of the Law of crypto currencies, is 150 billion dollars [3].

Considering all of the above, the prospects for bitcoins are rather ambiguous. Some countries regulate this currency at the legislative level, consolidate and work on its development, while others imperatively prohibit its use or sometimes introduce significant restrictions on its circulation.

Despite the hype in the financial market, all bitcoin transactions in Ukraine are still outlawed. In August 2017, the National Bank of Ukraine (NBU) issued a press release stating that cryptocurrencies do

not fall within any of the definitions set out in the legislation. Accordingly, it cannot be called illegal - just like mining, tokens, etc. If earlier the main reason to open a criminal case was that one could "cling" to the word "money surrogate", now there are no such cases. The NBU believes that the development of technology cripples should not encourage corruption, money laundering, and illegal activity financing. The whole world is fighting for transaction transparency and identification of transaction participants, so it is crucial that all transfers are made transparently. Therefore, the question is mostly about owning assets, declaring, paying taxes.

At present, there is no single definition and approach to regulating cryptocurrency transactions in Ukraine. Although, according to statistics, Ukraine is in the top 5 countries in terms of the number of users of different bitcoin wallets. There are many legal uncertainties about virtual currencies. The lack of a proper legal framework substantially increases all other risks [2, p. 762].

As of today, according to Part 1 of Art. 99 of the Constitution of Ukraine, the monetary unit of Ukraine is the hryvnia. According to Clause 3.3 of Art.3 of the Law of Ukraine of April 5, 2001 No. 2346-III "On Payment Systems and Transfer of Funds in Ukraine", Part 1 of Art. 3 Decree of the Cabinet of Ministers of Ukraine "On the System of Currency Regulation and Currency Control" No. 15-93 dated 19.02.1993, the hryvnia as a monetary unit of Ukraine (the national currency) is the only legal means of payment in Ukraine accepted by all natural and legal persons without any restrictions on the whole territory of Ukraine for conducting transfers. According to pp.14.1.93 of the Tax Code of Ukraine, funds mean hryvnia or foreign currency.

According to Part 1 of Art. 2 of the above-mentioned Decree of the CMU "On the system of currency regulation and currency control", residents and non-residents have the right to be the owners of currency values located on the territory of Ukraine. Residents also have the right to be holders of currency values located outside Ukraine, except in cases stipulated by the legislative acts of Ukraine. The list of currency values is indicated in Art.1 of the said Decree, including the

currency of Ukraine, payment documents and other securities, expressed in the currency of Ukraine; foreign currency, payment documents and other securities denominated in foreign currency or bank metals; banking metals.

Consequently, crypto currency in the sense of Ukrainian law cannot yet be equated with either a means of payment or currency value [4]. We believe that this requires further legislative development.

Also, due to the fact that the crypto currency in Ukraine has no legal basis, there are a lot of problematic issues. An obvious problem arising from the relationship between crypto currency entities is the protection of rights. As a regulator, the National Bank of Ukraine is not responsible for any risks and losses associated with the use of "virtual currency / crypto currency". In addition, without the legalization of this issue and legislative fixing, the likelihood of spreading money laundering and financial terrorism is increasing. If the state created a proper license for crypto currency activity, it would greatly help to avoid these situations [5].

In our view, the legal ban on the use of crypto currencies will not hinder the use of crypto currencies, but will not allow states to regulate the processes of using such currency. If the state bans the use of crypto currencies, it will exclude itself from the process of their circulation.

Another problem of crypto currency legal regulation in Ukraine is the ambiguous regulation of crypto currencies in the world. Countries with strong economies and currencies are introducing crypto currency as a means of payment or as a financial asset. Countries with weak economies and volatile currencies are trying to support the national currency by restricting crypto currency as a means of payment, but by allowing crypto currency as a means of exchange.

For example, in some U.S. states, crypto currency is subject to wire transfer. In Germany, bitcoins are recognized as a unit of account. In Japan, crypto currency is recognized as legal tender. In Europe, crypto currency is mostly equated with electronic money, but it is not considered legal tender and is considered as a medium of exchange. In China, bitcoin transactions are banned for banks but allowed for individuals. In Canada, bitcoin is a means of calculation. In Spain, the bitcoin system is recognized as an official

payment system. There are direct bans on crypto currency in Bolivia, Ecuador, Thailand and Vietnam.

It is interesting how the Russian legislator proposes regulation of the crypto currency market. For the most part, he has followed the path of total state control and regulation with restrictions in the autonomous actions of the subjects of the crypto market. We believe that such actions limit the constitutional rights of citizens to use their personal funds independently. The Ukrainian legislator did not adopt such an approach and is trying to give crypto autonomy to the entities in the market, and therefore the question of the consequences of such activity. The Ukrainian legislator does not assume any liability for the consequences and results of the actions of the crypto entities.

Thus, the ambiguous approach to crypto currencies around the world creates additional problems for determining the legal status of crypto currencies. This means that in Ukraine it is necessary to develop its own approach to the legal regulation of crypto currencies, giving them a special legal status, based on the current state of legislation and economic development of the country [4].

Given the significant increase in interest in the virtual currency among the people of Ukraine and the existing problems in the use of crypto currencies, the need for the legal definition of crypto currency becomes increasingly urgent. Thus, on October 6, 2017, a draft law "On the Circulation of Crypto currency in Ukraine" was registered in the Verkhovna Rada [6]. This law was created to regulate legal relationships regarding the circulation, storage, possession, use and conduct of transactions using crypto currency.

In case of introduction of legal regulation of crypto currency in Ukraine, the following issues should be resolved:

- identify virtual currencies (including electronic money), including crypto currencies. Such a definition should not contradict the definition of the EU, in particular in view of the Association Agreement between Ukraine and the EU [7];

- to establish the procedure for taxation of mining operations, crypto currency exchange (exchange);

- determine the procedure for creation and activity of the crypto currency exchange;

- establish responsibility for non-compliance with the requirements of the current legislation on the use of crypto currencies;

- introduce licensing of crypto currency-related business activities [8, p. 77].

In a draft law "On the Circulation of the Crypto currency in Ukraine", the Ukrainian legislator defines: "crypto currency is a program code (a set of characters, numbers and letters), which is the subject of property rights, which may act as exchanges, information about which is stored and stored in the blockchain system as a units of the current blockchain system in the form of data (program code)" The project proposes to believe that crypto currency (program code) is subject to property rights. And its turnover is carried out by means of a mine agreement.

Scope of crypto currency: the subject of crypto currency transactions has the right to freely dispose of crypto currency, in particular, to carry out transactions for the exchange of any crypto currency for another crypto currency, its exchange for electronic money, currency values, securities, services, goods, etc.

Also, determining the legal status of miners will be a positive aspect of the law on crypto currency circulation in Ukraine. This serves to prevent disputes with law enforcement agencies about the illegality of mining and harassment of miners.

The crypto currency's popularity is twofold: anonymity and decentralization. It is believed that in the future, crypto currency will be the successor of paper money, completely taking over their functions. But at this stage, its legal status in many countries is uncertain.

Conclusions. Thus, as a result of the study, the authors are deeply convinced that the state of Ukraine, in recognizing the existence of crypto currencies, should create the legislative conditions for the development of financial institutions with a broader adoption of the crypto market and its instruments. Such regulation can be expressed in the positive regulation at the level of clarification and the adoption of a separate law on the regulation of the circulation of crypto currency in Ukraine.

References

1. Galushka E.O., Pakun O.D. Law of crypto currencies, and prospects of their development. *Young scientist*. 2017. № 4. P. 634-639.

2. Hryhorevska O.O., Salazkin S.L. Features of functioning virtual of crypto currencies: economic aspect. 2016. Pp. 760-766.

3. Podyachev S. 10 experts about crypto currencies and tokenization of economy. 2018. URL: <https://nachasi.com/2018/02/13/tokenization/>.

4. Crypto currencies in Ukraine. URL: <http://jur-gazeta.com/publications/practice/informacyne-pravo-telekomunikaciyi/kriptovalyuti-v-ukrayini-.html>.

5. Crypto currency: its legal status, problems of application URL: http://ukrainepravo.com/legal_publications/essay-on-it-law/it_law_bricks_%D1%81_crypto_currency/.

6. On circulation of crypto currency in Ukraine: The bill № 7138. URL: http://w1.c1rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62684 (referral date is 15/12/2017).

7. Zagnitka O. Bitcoin: set up, can not ban. Kyiv School of Economics. URL: <http://www.kse.org.ua/en/about/kse-news/?newsid=2096>

8. Volosovich S.V. Virtual currency: globalization challenges and prospects for development. *Economy of Ukraine*. 2016. № 4. Pp. 68-87.

**ДЕЯКІ СУЧАСНІ АСПЕКТИ ПУБЛІЧНОГО РЕГУЛЮВАННЯ
КРИПТОВАЛЮТНИХ ВІДНОСИН В УКРАЇНІ**

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Мета: провести перегляд сучасного стану регулювання ринку криптовалют в Україні та висловити свою думку щодо правового регулювання цього явища в Україні. **Постановка проблеми:** у статті розкривається правова регламентація криптовалют в законодавстві, наведені міжнародні норми, а також актуальність та важливість цього явища. Розглянута практика зарубіжних країн та важливість закріплення та імплементація в національне законодавство. Також важливим аспектом роботи є саме дослідження розвитку і використання криптовалют в Україні, аналіз особливості функціонування криптовалют в світових платіжних системах. Криптовалюта стала неодмінною частиною соціальних відносин, фінансових інструментів, бізнесу, при цьому не має правового регулювання. Як показує світова практика, криптовалюта набирає все більшої популярності в усьому світі, її розвиток заборонити технічно неможливо та економічно недоцільно, а отже, правове регулювання криптовалют наразі є лише питанням часу. **Результати:** на сьогодні в Україні, як і в багатьох країнах, відсутній законодавчий статус криптовалют. Криптовалюта (цифрова валюта) – це особливий електронний платіжний засіб, курс якого підтримується тільки попитом та пропозицією. Такі електронні гроші не регулюються ні однією з державних правових систем. У законодавця є тільки два шляхи розвитку наступних подій: правове визнання та закріплення в норми національного законодавства криптобізнесу або імперативно заборона криптотехнологій. Перспективи біткоїнів досить неоднозначні. Одні країни регламентують цю валюту на законодавчому рівні, закріплюють та працюють над її розвитком, а інші – імперативно забороняють її використання або інколи вносять суттєві обмеження щодо обігу цієї валюти. Всі операції з біткоїнами в Україні досі поза законом, і не існує єдиного визначення та підходу стосовно регулювання операцій з криптовалютою. Україна входить до топ-5 країн світу за кількістю користувачів різними біткоїн-гаманцями. Криптовалюта в розумінні українського законодавства поки що не може бути прирівняна ні до засобу платежу, ні до валютної цінності. Автор доходить висновку, що в майбутньому криптовалюта стане наступником паперових грошей, повністю перейнявши їх функції на себе. **Обговорення:** на даному етапі правовий статус криптовалют у багатьох країнах є невизначеним. Проте, ми глибоко переконані, що держава повинна визнати існування криптовалют. Таке визнання може бути виражене в позитивному регулюванні на рівні роз'яснень, та прийнятті окремого закону щодо регулювання обігу криптовалют в Україні.

Ключові слова: криптовалюта; біткоїн; криптографічні; учасники криптовалют; альтернативні методи розрахунків.