



Features of the Legal Regulation of the Cryptocurrency Market

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Abstract: The article is devoted to the peculiarities of the legal regulation of the cryptocurrency market. Regulatory minimalism and the complexity of defining a new legal institution have led to the problem of legal regulation of the crypto market. The complex technological nature and features of the functioning of the crypto market do not allow us to unambiguously attribute the object of research to existing legal institutions and regulate a new object with the help of existing legal instruments. The purpose of the study is to develop measures of legal regulation of the crypto market. The research methods are based on the analysis of a limited number of studies that were selected according to special parameters and comprehensively considered. The study showed that in order to effectively regulate the crypto market, it is necessary to take a number of measures, including identification and verification of all clients who carry out operations with cryptocurrency, as well as licensing and registration of crypto exchanges.

1 INTRODUCTION


In the world of accelerated development of trade turnover, cryptocurrency can become a powerful engine of progress and even the main currency of the future. Its advantages over other means of payment are factors such as the convenience of paying for goods, high speed of transactions, the use of modern cryptographic encryption methods (Abd Aziz, A. S., Noor, et al 2022). Therefore, the issues of legal regulation of transactions made using cryptocurrencies seem to be an urgent topic for research. At the same time, it should be recognized that to date, legal science has not developed a unified approach to the mechanism of legal regulation of this area. The problem is compounded by the fact that the cryptocurrency as a phenomenon by its nature cannot be considered as an intra-national phenomenon, since almost immediately from the moment of its appearance it crossed state borders. The legislation of most developed countries strives to regulate the mechanisms related to the cryptocurrency market in as much detail as possible (Butenko, E. D., Isakhaev, N. R., 2018).

Cryptocurrency has a material value, however, expressed not so much in its nature as in the ability to exchange it for property benefits. At the same time, it does not exist in the material world, it is a code and is extracted using the power of computers. It does not have a single issuer and is often anonymous, it does not have a single storage location, since it is distributed among a number of devices (Banwari V., 2017). None of the objects existing today that can be considered as values (tangible and intangible) has such a set of properties, and none of the currently existing legal institutions can unambiguously regulate cryptocurrency. Therefore, the question remains open whether a centralized full-fledged settlement of cryptocurrencies is possible, and how to reduce the risks and threats of uncontrolled distribution of cryptocurrencies.

2 METHODS

The basis of this study is the analysis of works on the legal regulation of the crypto market. To this end, a database of 100 world studies written in the period from 2015 to 2022, published in the public domain,

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including in international citation databases such as Scopus and WoS, was formed and analyzed. The Scopus and WoS database has a set of intelligent tools that made it possible to analyze scientific research. A wide range of publications was used for the selection, according to the type of all the author's publications in the Scopus or WoS database.

The studies were selected automatically according to the following criteria:

1. The authors have at least two publications on the subject of "legal regulation of the crypto market" over the past five years;

2. Numerical superiority of more than 80% of legal studies in the total number of publications of authors.

3. The author's profile should indicate that his publications are thematically related to the legal sciences

4. The work should be written between 2015 and 2022.

After the conducted sample, 29 studies were used, the analysis of which allowed us to draw conclusions about the need to regulate the crypto market in order to preserve economic and financial stability, minimize the risks of fraudulent actions in the field of using cryptocurrencies.

3 RESULTS

At the present stage, the cryptocurrency market is rapidly growing, so at the beginning of 2022, the total volume of their capitalization reached more than 2.4 trillion US dollars, which is 1% of the volume of all global financial assets (Kozhedubova V.A., Kovaleva T.V., 2022).

The legal regime of cryptocurrencies varies significantly in different countries. In a number of countries, operations with cryptocurrencies are officially allowed. Other countries have chosen the path of a complete ban on the use and circulation of cryptocurrencies. These countries include Algeria, Bolivia, Egypt, Nepal, etc. In some countries, the turnover and mining of cryptocurrencies is partially prohibited (Bangladesh, Vietnam, China, Saudi Arabia) (Chornous, Y., Denysenko, S. et al 2019).

One of the leading states in the field of digital technologies is Japan. In this country, cryptocurrencies have the status of a means of payment. They can be used as a means of payment for goods, works, services. Cryptocurrency exchange activities operating in Japan are subject to the regulation of the Law on Payment Services. Cryptocurrency exchange companies must be

registered, keep records, and take security measures to protect customers (Anush, B., Inna, G., et al 2021). The Law on Payment Services defines "cryptocurrency" as the value of property. The law also states that cryptocurrency is limited by the value of property, which is stored electronically on a crypto wallet and is not a legal tender (Hutchinson, A. C., 2021).

A progressive approach to cryptocurrencies is typical for Brazil. Its legislation provides for a very broad definition of digital currency. The Brazilian Treasury has allowed investment funds to invest in cryptocurrencies through derivatives and foreign funds, but they are prohibited from doing so directly (Hacker, P., Thomale, C., 2018).

Since the advent of cryptocurrencies, this asset has been considered in the countries of the European Union, mainly as a means of investment. Over time, the question of taxation began to arise. In 2015, the European Court of Justice actually recognized Bitcoin as a currency and exempted operations of exchanging cryptocurrencies for fiat currencies from VAT (Fantacci L., 2019).

Cryptocurrencies are very popular in Spain, since 2014 they have been equated with electronic means of payment. When making a profit from cryptocurrency transactions, it is included in the tax return. Miners in Spain must be registered as entrepreneurs and pay taxes (Dallyn S., 2017).

In Sweden, bitcoin has been considered as a currency since 2013. Mining is taxed on income from labor or business activities. The experience of cryptocurrency turnover in Sweden is of great interest (Aziz, A.T., 2019).

In Germany, the attitude towards bitcoins has been changing. In 2011, it was classified by the Federal Financial Supervision Administration not as electronic money, but as a commodity (Yahya M. A., Fong I. 2022). Since 2013, bitcoin has been recognized by the German Ministry of Finance as an official means of payment (Fatkina E. V., 2015).

In 2013, in Norway, cryptocurrency was recognized as a digital asset subject to income tax. In 2018, it was reported that in this Scandinavian country, as well as in Sweden, where cash is practically out of circulation, it is also planned to issue a national virtual currency (Hnatovska A. I., Manzhosova, 2019).

One of the leaders in cryptocurrency turnover and blockchain operations is the United Kingdom. Many companies involved in the turnover of cryptocurrencies are registered in the UK. The successful financial and banking infrastructure of the country, support for startups in the field of digital

currencies contribute to the development of this area in the UK (Hughes S.D., 2017). At the same time, the country has not yet formed legislation regulating the turnover of cryptocurrency, which is still considered as a unique combination of digits. Thus, the legislation on cryptocurrencies is still in the process of formation in the UK and many countries of the world (Dolgieva M.M., 2018).

The specifics of the legal regulation of cryptocurrencies in the United States are due to its federal structure, according to which the status of a digital currency is determined differently in different states. In relation to the cryptocurrency, experts conditionally divided the US states into several groups. In some states, such as Arkansas and South Dakota, there is no legislation on digital currency issues. In a number of conservative states, like Texas or Iowa, cryptocurrency is treated negatively (Bolotaeva O. S., Stepanova A. A., 2019).

4 DISCUSSION

In recent years, many scientific papers have been published investigating the main risks of the spread of cryptocurrencies, which, in the absence of legal restrictions on the use of cryptocurrencies, can carry systemic threats (Dorbala M. R., Gautam O., et al 2018). The analysis of research allows us to identify the main threats to the spread of cryptocurrencies among which:

- risk to financial stability;
- expansion of illegal activities;
- a threat to the welfare of citizens.

All the risks of uncontrolled circulation of cryptocurrencies are identified in the works of experts who are seriously engaged in the legal regulation of crypto assets (Dorokhova E., Dorokhova E., et al 2021).

However, it is necessary to note another negative feature of the use of cryptocurrencies, this is the impact of mining on adjacent markets. The increased demand for special equipment for the production of cryptocurrencies leads to a shortage of semiconductors that are used in the production of complex equipment. Huge electricity consumption during mining can negatively affect the stability of the energy supply of social facilities and enterprises. In addition, increased energy consumption leads to environmental consequences, as it increases the carbon footprint in the atmosphere.

Volatility is the main feature of cryptocurrencies (Chang S.E., 2019). Cryptocurrency prices are unstable and depend on many factors, even the

information background can affect the exchange rate of bitcoin and other massively used cryptocurrencies. The volatility of cryptocurrencies is due to their high concentration among relatively few owners, which contributes to deliberate manipulation in the market. Manipulative speculation with cryptocurrency is also facilitated by the anonymity of both owners and purchasers of cryptocurrencies (Drozd O., Lazur Y., 2017). Therefore, there is a risk of losing investments for private investors.

Some experts rightly compare the cryptocurrency market with financial pyramids (Cassidy, J., Cheng, M. H., et al 2019). Investors with experience sell cryptocurrencies at a high price, which is supported by demand, and demand can grow on information that helps attract newcomers to the market. At the same time, inexperienced investors are willing to pay a high price for cryptocurrency in the hope of increasing profits, but everything can happen exactly the opposite. The formation of a cryptocurrency bubble in the market threatens with a complete loss of investments (Astrakhantseva, I., Astrakhantsev R., 2021). The situation becomes especially difficult when the purchase of cryptocurrencies is carried out at the expense of borrowed funds, in such cases, both lenders and borrowers suffer.

However, investors may lose their invested funds not only due to the high volatility of the cryptocurrency, but also due to fraudulent actions or cyber attacks. For example, in 2013, 850,000 bitcoins were stolen during the liquidation of the crypto exchange in Japan, which amounted to about \$ 450 million, only a small part was returned to customers (Detroja, P., Agashe, A., 2019). This is not an isolated case, according to the report of the CipherTrace organization, which specializes in cybersecurity, the volume of stolen cryptocurrencies as a result of fraudulent actions is constantly growing, so in 2019, cryptocurrencies were stolen by \$4.52 billion more than in the previous year (Gagauz V. D., Chuvyrgalova D. V., 2021).

In emerging markets, cryptocurrency thefts are often carried out by trading platforms themselves, so as a result of fraudulent actions on the cryptocurrency exchange in Turkey in 2021, investors lost more than \$2 billion. In 2020, assets in cryptocurrency worth more than \$3.6 billion were stolen in South Africa as a result of hacker attacks. Due to the use of special technologies, it is not possible to track the missing assets (Auer, R., Claessens, S., 2021).

The lack of a guarantee of the return of invested funds on crypto exchanges poses threats to the well-being of citizens, generates distrust of investment products, and also leads to social risks.

The use of cryptocurrencies creates a risk of financial stability in states, since the replacement of the national currency with cryptocurrency can lead to a decrease in financing of real sectors of the economy, to a decrease in the growth rate of citizens' incomes, to an increase in unemployment (Dumchikov M., et al, 2020). The acquisition of cryptocurrencies on exchanges instead of stocks and bonds will limit the ability of issuers to attract investments and reduce the capitalization of stock markets (Auer R., Claessens, S., 2018). The flow of funds from the banking sector to the cryptocurrency market will cause irreversible damage, reduce the financial stability of banks, and in general poses a threat to the economy and financial stability.

Since the owners of cryptocurrencies are anonymous, this fact contributes to criminal activity – money laundering, illegal withdrawal of funds, corruption, drug trafficking, etc. Fraudsters buy old crypto wallets for which it is impossible to identify the owners and use them in criminal activities (Bondarenko O., Kichuk, O., Antonov A., 2019). Thus, the problem of anonymity puts on the agenda an urgent issue of legal regulation of the crypto market with mandatory identification and verification of owners of crypto wallets. The activities of crypto exchanges cannot be shadow and tax-exempt, the main task of legislators is to bring participants in legal relations in the field of cryptocurrency circulation into the legal field, to endow them with rights, duties and responsibilities, this is the minimum, without which the entire crypto business will pose threats to the security of the economy and the welfare of citizens. Therefore, it is necessary to ensure the monitoring of transactions on crypto exchanges and the identification of transfers related to criminal activity, the identification of which should lead to the blocking of financial transactions and the freezing of funds of persons involved in criminal activity.

The activities of service providers in the field of cryptocurrency business must be licensed, and all participants must necessarily pass the appropriate registration.

5 CONCLUSION

The study showed that in order to effectively regulate the crypto market, it is necessary to take the following measures:

- licensing and registration of crypto exchanges;
- identification and verification of all clients performing financial transactions;

- the possibility of freezing funds and (or) blocking financial transactions of persons involved in terrorist activities;

- availability of software for monitoring transactions and determining transfers related to criminal activity;

- identification of financial transactions subject to special control (correlation of each transaction with criteria and signs of suspicious transactions).

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