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## DIGITAL ASSETS RIGHTS IN THE LIGHT OF WESTERN SANCTIONS AGAINST THE RUSSIAN FEDERATION

**Abstract.** The *purpose of the article* is to conduct a scientific analysis of Western sanctions policies against the Russian Federation concerning the digital assets market, free flow of crypto-currencies with the participation of Russian legal entities and individuals, their scope, and potential effectiveness.

**Research methods.** The study is based on general scientific and special methods of scientific knowledge, namely, methods of analysis and synthesis, forecasting and modeling methods.

**Results.** In the article, the author presents a comprehensive view of current regulative approaches taken in Western countries, namely the United States and the countries of European Union, regarding rights on digital assets in the general framework of sanctions policy taken against the Russian Federation as a reaction to its violent and unprovoked military aggression in Ukraine. Recommendations are also provided for strengthening the sanctions regime to adapt to the specifics of the legal nature of digital assets, their use as a means of circumventing Western sanctions.

**Conclusions.** Despite different regulatory mechanisms, there is a gradual inclusion of digital assets and rights to them in the scope of sanctioned property rights related to the Russian Federation in Western sanctions. The main feature of this regime today is aiming to restrict Russian legal entities and individuals from accessing and making transactions with digital assets, opening e-wallets and mining cryptocurrency. Regarding the further improvement of the sanctions regime on the rights to digital assets of persons related to the Russian Federation, we see three key directions: 1) practical and regulatory inclusion of digital assets in the scope of the general concept of assets used, taking into account that such assets are generally “hidden”; 2) developing additional recommendations (roadmap, action plan etc.), adapted specifically to the imposition of sanctions on digital assets, considering the peculiarities of the legal regulation of their circulation, in particular in the United States and the European Union (special attention should be paid to the classification of digital assets, ways to establish the owners of rights to them, the minimization of the risks of avoiding sanctions against “traditional” rights by their digitalization, and the optimization of coordination in this area between different Western legal orders, which currently have quite different legal approaches in this respective area); 3) strengthening the sanctions policy against Russian cryptocurrency exchanges, companies and the technical capabilities of legal entities and individuals related to the Russian Federation to mine cryptocurrencies, to make calculations to circumvent sanctions using digital assets.

**Key words:** economic sanctions, Russian-Ukrainian war, digital asset, virtual currency, crypto-asset, Russian Federation entities and individuals.

### 1. Introduction

A new phase of the Russian-Ukrainian war began on February 24, 2022, marked by a full-scale invasion of the Russian Federation in our country. The response of the Ukrainian government was immediate and proportional to the level of the threat: on the same day, the President of Ukraine signed Decree № 64/2022 “On the imposition of martial law in Ukraine” (President of Ukraine, 2022), which was approved by the Verkhovna Rada of Ukraine without delay

in Law of Ukraine “On approval of the Decree of the President of Ukraine “On the imposition of martial law in Ukraine” of February 24, 2022 № 2102-IX (Verkhovna Rada of Ukraine, 2022). Along with the intense military action and information war, one of the key aspects of our struggle is economic war, waged not only by Ukraine, but with the direct participation of the Western world countries: the United States, the EU, the United Kingdom, the Commonwealth of Australia, Japan, Taiwan (the

Republic of China), and so on. Adopted restrictive economic and financial mechanisms, widely known as “economic sanctions” – restrictions that have been periodically applied by different countries to achieve their foreign policy goals, especially widely used in the XX century (Manuilova, 2014, p. 38), directed against Russian government, separate Russian entities and individuals, the entire Russian industries, primarily connected with the Russian military-industrial complex and the economical abilities of the Russian Federation to continue its brutal and unprovoked aggression as such, already reportedly made Russia a most sanctioned country in the world (Euronews, 2022).

While the major efforts on imposing sanctions against the Russian Federation are concentrated on “traditional” economic domains, the underlying intent is also connected with the prevention of circumvention of sanctions by Russia, via, inter alia, usage of digital assets, including crypto-currencies. The main issue with this process lies in the field of legal characteristics of digital assets as such, their decentralized nature, difficulties in controlling the corresponding transactions, taking into account the overall “embryonic” state of legal regulation of digital assets market in the US and the EU. Nonetheless, several crypto-assets sanctions are adopted by our Western allies in the latest packages of sanctions against the Russian Federation and connected entities (Brett, 2022; Reuters, 2022).

Thus, it is of practical importance to conduct a scientific analysis of Western sanctions policies against the Russian Federation concerning digital assets market, free flow of crypto-currencies with the participation of Russian legal entities and individuals, their scope and potential effectiveness, which is the main aim of this article. To achieve this goal, we will examine the general logic and applied legal mechanisms in Western sanctions imposed on the Russian authoritarian regime with emphasis on economic and financial instruments, and further delve in specifics of sanctions concerning crypto-currencies and other digital assets connected to the government of the Russian Federation, Russian entities and individuals. Examining stated subjects and issues, we will use general and special methods of scientific knowledge, namely methods of analysis and synthesis, forecasting and modeling methods.

## **2. Basic characteristics of the legal framework of the Western sanctions against the Russian Federation**

At the regulatory level, the mechanism of implementation of the EU sanctions imposed on the Russian Federation is carried out via two fundamental EU non-legislative acts, sub-

ject to further numerous amends. These are: Council Regulation (EU) № 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (European Union, 2014b) and Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine (European Union, 2014a).

The scope of these non-legislative acts is broad, ranging from freezing all funds and economic resources belonging to, owned, held or controlled by any natural or legal persons, entities or bodies, or natural or legal persons, entities or bodies associated with them, as listed in Annex I to the Council Regulation (EU) № 269/2014 of 17 March 2014 according to Article 2(1) of the Regulation, to prohibiting the direct or indirect purchase or sale of, the direct or indirect provision of investment services for or assistance in the issuance of, or any other dealing with transferable securities and money-market instruments issued after 9 March 2022 by: (a) Russia and its Government; (b) the Russian Central Bank; or, (c) a legal person, entity or body acting on behalf of, or at the direction of, the entity referred to in point “b”, according to the provisions of Article 1a of the Council Decision 2014/512/CFSP of 31 July 2014. The general goal of those and other sanctions (prohibitions or restrictions) is understood: to weaken the economy of the Russian Federation as a direct response to the several aggressive acts against Ukraine, starting from the annexation of Crimea in 2014. Their particular provisions, however, may be the subject of another comprehensive study, while we will pay attention further only to those, which are directly or indirectly connected to the ownership, transactions and operations with rights on digital assets.

The regulatory implementation of the process of imposing economic and financial sanctions on the Russian Federation by the United States is differing from the EU, representing an extensive system of acts adopted at the level of laws, the President’s executive orders, determinations of the Secretary of the Treasury, sanctions regulations of Treasury’s Office of Foreign Assets Control (OFAC), and so on. Historically, this process started with the Ukraine/Russia-related sanctions program, which was implemented by the OFAC on March 6, 2014, when the President of the United States of America, in Executive Order (E.O.) 13660, declared a national emergency to deal with the threat posed by the actions and policies of certain persons who had undermined democratic processes and institutions in Ukraine; threat-

ened the peace, security, stability, sovereignty, and territorial integrity of Ukraine; and contributed to the misappropriation of Ukraine's assets (Office of Foreign Assets Control, 2016). One of the latest most notable taken regulative actions was the amendment and reissuance, in their entirety, the Ukraine-Related Sanctions Regulations, 31 C.F.R. part 589 by the OFAC, and renaming the regulations the Ukraine/Russia-Related Sanctions Regulations (U.S. Department of the Treasury, 2022d). It is stated that this administrative action replaces the regulations that were published in abbreviated form on May 8, 2014 with a more comprehensive set of regulations that includes additional interpretive and definitional guidance, general licenses, and other regulatory provisions that will provide further guidance to the public (Amendment to the Ukraine-Related Sanctions Regulations and Associated Administrative List Updates (U.S. Department of the Treasury, 2022a)). Further on, we will concentrate on US regulations specific to the analyzed subject of sanctions on digital assets rights.

### **3. Rights on digital assets: already imposed sanctions and possible future development**

On the EU level, the main restrictions concerning digital assets and crypto-currencies are presented in the latest so-called "fifth package" of sanctions against the Russian Federation (European Union, 2022c), by adopting, *inter alia*, the Council Decision (CFSP) 2022/578 of 8 April 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (European Union, 2022a). In Article 1b(2) of the main (amended) Decision it is stated that it shall be prohibited to provide crypto-asset wallet, account or custody services to Russian nationals or natural persons residing in Russia, or legal persons, entities or bodies established in Russia, if the total value of crypto-assets of the natural or legal person, entity or body per wallet, account or custody provider exceeds EUR 10 000. In the paragraph 6 of the preamble to the amending Decision, it is substantiated that, in view of the gravity of the situation, and in response to Russia's military aggression against Ukraine, it is appropriate to introduce further restrictive measures. In particular, it is appropriate to extend the prohibition on deposits to crypto-wallets.

It is also worth mentioning that in FAQ (Frequently Asked Questions) section on an official web-site of the European Commission regarding crypto-assets coverage in EU sanctions policy on the Russian Federation as of April 11 2022, there are two key points mentioned:

1) regarding general coverage of crypto-assets and in particular cryptocurrencies by these sanctions, it is stated that in Council Regulation (EU) № 269/2014, the non-exhaustive definition of "funds" *covers crypto-assets, including cryptocurrencies*, and the definition of "economic resources" may also *extend to certain crypto-assets (emphasis added)*. As such, crypto-assets are covered by the relevant provisions on the asset freeze and prohibition to make funds or economic resources available to listed persons. For its part, Council Regulation (EU) № 833/2014 clarifies that "transferable securities" *include crypto-assets*, but it adds "with the exception of instruments of payment". Summarizing, this document concludes, that all transactions prohibited in the Regulations are also prohibited if carried out in crypto-assets, and all transactions allowed in the Regulations remain allowed if carried out in crypto-assets. In addition, crypto-assets should not be used to circumvent any EU sanctions;

2) regarding mentioned prohibition in Article 5b(2) of Council Regulation (EU) № 833/2014 to provide crypto-asset wallet, account or custody services to Russian nationals or natural persons residing in Russia, or legal persons, entities or bodies established in Russia, if the total value of crypto-assets of the natural or legal person, entity or body per wallet, account or custody provider exceeds EUR 10 000, and taking into account the possibility of enormous fluctuations of the value of crypto-assets, on the issue of interpreting this prohibition by the service provider, the document lies responsibility on the latter, stating that EU crypto-asset wallet, account or custody services providers should therefore put in place the appropriate safeguards and remedies to avoid ending up servicing clients in the conditions laid down by Article 5b(2). These safeguards and remedies should duly take into account the fact that the value of crypto-assets can fluctuate substantially over a short period of time (European Union, 2022b). As of today this provision is contained in Article 1b(2) of the Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine as mentioned above. Thus, the EU's broader approach to interpreting the meaning of "funds", "economic resources" with the inclusion of any type of crypto-assets is established, as well as laying the obligation to prevent exceeding the allowable fiat equivalent in the crypto-wallet account, owned by Russian entities, on service providers, which is understandable. Nonetheless, it is seemed that present EU sanctions aren't comprehensive enough and do not comprise the whole spectrum of digital assets, doing so

only by expansive interpretation of general legal and economic concepts, while aiming directly only on crypto-asset wallets and connected operations with them.

Regarding digital assets rights sanctions aimed against Russian Federation and imposed by the United States respective authorities, taking into account quite branched structure of regulatory decision making in this light, it is practical to summarize two main approaches, upheld by the OFAC:

1) OFAC has imposed expansive sanctions actions against certain Russian entities and individuals pursuant to E.O. 14024 (President of the United States, 2021), in addition to other authorities. All U.S. persons are required to comply with OFAC regulations, regardless of whether a transaction is denominated in traditional fiat currency or virtual currency. Under this provision, inter alia, U.S. persons, including virtual currency exchanges, virtual wallet hosts, and other service providers, such as those that provide nested services for foreign exchanges, are generally prohibited from engaging in or facilitating prohibited transactions, including virtual currency transactions in which blocked persons have an interest (U.S. Department of the Treasury, 2022b);

2) OFAC recently also specifically targeted Russia's virtual currency mining industry via the operations of relevant Russia's companies. Namely, OFAC designated virtual currency mining company Bitriver, which was founded in Russia in 2017 and currently operates out of three offices across Russia. In 2021, Bitriver shifted legal ownership of its assets to a Switzerland-based holding company. OFAC designated this holding company, Bitriver AG, pursuant to E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy. OFAC additionally designated 10 Russia-based subsidiaries of Bitriver AG pursuant to E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Bitriver AG: OOO Management Company Bitriver, OOO Bitriver Rus, OOO Everest Grup, OOO Siber-skie Mineraly, OOO Tuvaasbest, OOO Torgovy Dom Asbest, OOO Bitriver-B, OOO Bitriver-K, OOO Bitriver-North, and OOO Bitriver-Turma. By doing so OFAC stated that the United States is committed to ensuring that no asset, no matter how complex, becomes a mechanism for the Putin regime to offset the impact of sanctions (U.S. Department of the Treasury, 2022c). It is seen that the steps taken by the US regulator to counter the activities of Russian mining companies, combined with other mechanisms of a prohibitive nature, can, if not stop such companies' activities, but significantly reduce profits

and the possibility to attract new users, prevent transactions with the US and other Western countries via the platforms used.

Concerning future broadening of sanctions regime on digital assets rights, connected one way or another with the Russian Federation, there are several key aspects that are worth mentioning. As the starting point, relevant additions can be made in recommendations, proposed by the international working group on sanctions on Russia (also known as the Yermak-McFaul expert group), which has already prepared two documents: the Action Plan on Strengthening Sanctions against the Russian Federation on April 19 (The International Working Group on Russian Sanctions, 2022), and The Energy Sanctions Roadmap: Recommendations on Sanctions on the Russian Federation on May 10 (Office of the President of Ukraine, 2022). Although the first document does not specifically mention crypto-currencies and other digital assets and the second one is not available for the public yet, the Action Plan contains several usages of the term "assets", which may be seen in a broad sense, both in the Title 5, dedicated to strengthening of individual sanctions against designated categories of individuals: 1) it is recommended to sanction all family members of persons connected to the Russian government who hold *the assets* of individuals in category I, with a focus on relatives of the President, including all his children and their mothers, as well as other senior political personalities (*emphasis added*); 2) to consider, in close consultation with the Government of Ukraine, sanctions relief to individuals in the above categories who publicly and credibly denounce Putin's war, stop all business operations in Russia that help to finance the war, agree to assist financially in Ukraine's reconstruction, and help identify *hidden assets of those sanctioned* (*emphasis added*).

In this regard it is advisable to include on practice and in future regulations in the scope of the concept of "assets" used in the Action Plan, especially those that are hidden, also virtual currencies, other digital values and assets. Moreover, taking into account the legal and technological nature of digital assets, their "elusiveness" from regulative monitoring and control, it is considered necessary to develop additional recommendations (roadmap, action plan etc.), adapted specifically to the imposition of sanctions on digital assets, taking into account the peculiarities of the legal regulation of their circulation, in particular in the United States and the European Union. Particular attention should be paid to the classification of digital assets, ways to establish the owners of rights to them, to the minimization of the risks of avoid-

ing sanctions against “traditional” rights by their digitalization, to the optimization of coordination in this area between different Western legal orders, which as of today have quite different legal approaches in this respective area. Additional efforts should be made to strengthen the sanctions policy against Russian cryptocurrency exchanges, companies and the technical capabilities of legal entities and individuals related to the Russian Federation to mine cryptocurrencies, to make transactions to circumvent sanctions using digital assets.

#### 4. Conclusions

Summarizing, we must acknowledge that despite different regulatory mechanisms adopted in the US and the EU, there is a gradual inclusion of digital assets and rights to them in the scope of sanctioned property rights related to the Russian Federation in Western sanctions. The main feature of this regime today is aiming to restrict Russian legal entities and individuals from accessing and making transactions with digital assets, opening e-wallets and mining cryptocurrency.

Regarding the further improvement of the sanctions regime on the rights to digital

assets of persons related to the Russian Federation, we see three key theses: practical and regulatory inclusion of digital assets in the scope of the general concept of assets used, taking into account that such assets are generally “hidden”; developing additional recommendations (roadmap, action plan etc.), adapted specifically to the imposition of sanctions on digital assets, considering the peculiarities of the legal regulation of their circulation, in particular in the United States and the European Union. Particular attention should be paid to the classification of digital assets, ways to establish the owners of rights to them, to the minimization of the risks of avoiding sanctions against “traditional” rights by their digitalization, to the optimization of coordination in this area between different Western legal orders, which currently have quite different legal approaches in this respective area; strengthening the sanctions policy against Russian cryptocurrency exchanges, companies and the technical capabilities of legal entities and individuals related to the Russian Federation to mine cryptocurrencies and make calculations to circumvent sanctions using digital assets.

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## **ПРАВА НА ЦИФРОВІ АКТИВИ У СВІТЛІ САНКЦІЙ ЗАХІДНИХ КРАЇН ПРОТИ РОСІЙСЬКОЇ ФЕДЕРАЦІЇ**

**Анотація.** *Метою статті* є проведення наукового аналізу санкційної політики держав Заходу проти Російської Федерації щодо ринку цифрових активів, вільного обігу криптовалюти за участю російських юридичних і фізичних осіб, їх масштабу та потенційної ефективності.

**Методи дослідження.** Дослідження базується на загальнонаукових і спеціальних методах наукового пізнання, а саме на методах аналізу та синтезу, прогнозування та моделювання.

**Результати.** У статті автор надає комплексну характеристику сучасних регулятивних підходів, прийнятих у західних країнах, а саме США та державах Європейського Союзу, щодо прав на цифрові активи в загальних межах санкційної політики проти Російської Федерації як реакції на її насильницьку й неспровоковану військову агресію проти України. Також пропонуються рекомендації щодо посилення санкційного режиму для адаптації до особливостей правової природи цифрових активів, їх використання як засобу обходу західних санкцій.

**Висновки.** Відбувається поступове включення цифрових активів та прав на них у сферу підсанкційних об'єктів права власності, пов'язаних із Російською Федерацією в західних санкціях, незважаючи на різні механізми регулювання. Головним на сьогодні є обмеження російським юридичним і фізичним особам доступу та можливості здійснення операцій із цифровими активами, відкриття електронних гаманців та майнингу криптовалюти. Щодо подальшого вдосконалення режиму санкцій стосовно прав на цифрові активи осіб, пов'язаних із Російською Федерацією, ми бачимо три ключові напрями: 1) практичне й нормативне включення цифрових активів у сферу загального використовуваного поняття активів з урахуванням того, що такі активи, як правило, є «прихованими»; 2) розроблення додаткових рекомендацій (дорожньої карти, плану дій тощо), адаптованих спеціально до введення санкцій щодо цифрових активів з урахуванням особливостей правового регулювання їх обігу, зокрема, у США та Європейському Союзі (особливу увагу варто приділити класифікації цифрових активів, способам встановлення власників прав на них, мінімізації ризи-

ків уникнення санкцій проти «традиційних» прав шляхом їх цифровізації, оптимізації координації в цій сфері між різними західними правопорядками, які на сьогодні мають досить різні правові підходи у відповідній сфері); 3) посилення санкційної політики щодо російських криптовалютних бірж, компаній та технічних можливостей юридичних і фізичних осіб, пов'язаних із Російською Федерацією, щодо майнінгу криптовалют для проведення розрахунків для обходу санкцій за допомогою цифрових активів.

**Ключові слова:** економічні санкції, російсько-українська війна, цифровий актив, віртуальна валюта, криптоактив, юридичні та фізичні особи, що є резидентами Російської Федерації.

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