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## DEVELOPMENT OF RELATIONS IN THE FIELD OF CRYPTOCURRENCY CIRCULATION AND THE FORMATION OF RELEVANT LEGISLATION IN UKRAINE

**Abstract. Purpose.** The purpose of the article is to analyze the regulatory and practical provisions, considerations and conclusions of researchers regarding the circulation of cryptocurrency in Ukraine and to provide proposals for improving the regulatory support of these processes. **Research methods.** The study of relations with cryptocurrency was carried out using well-known research methods: analysis and synthesis, grouping method, system-functional method, comparative legal method, scientific abstraction, and others, with the help of which the legal relations with cryptocurrency were examined, conclusions and proposals were made. **Results.** The article shows that the legal framework has not yet created a regulatory framework for regulating relations with cryptocurrencies, and therefore, the NBU and other financial institutions have a controversial and dubious attitude towards innovations in monetary circulation. The laws to be adopted in Ukraine will be aimed at legalizing and regulating relations with cryptocurrencies and will have a positive impact on the state budget. Cryptocurrencies have become a significant asset for individuals, legal entities and government agencies in the current economic environment. The use of cryptocurrencies in financial circulation shows a steady upward trend and user confidence. **Conclusions.** The attention is drawn to the fact that in the information society, the role of legal regulation of processes involving the use of digital technologies is rapidly increasing. Such regulation should be effective from various angles and meet modern challenges and threats. Discussion approaches to understanding the essence of cryptocurrency and the problems of legal regulation of its circulation are presented in the article. The stages of formation of legal regulation of cryptocurrency circulation in Ukraine are examined. The legislation developed and adopted in Ukraine is analyzed. Different legal approaches to understanding the essence of cryptocurrency are proposed. The article specifies the existing problems of legal regulation of cryptocurrency circulation in Ukrainian legislation and compares them with the practice of other countries. It is emphasized that the search for the most effective legal regulation of relations with cryptocurrency is associated with the creation of an optimal legal framework, as well as with the development of cryptocurrency business and decentralization of cryptocurrency circulation. The article characterizes the formation of the international legal regime for cryptocurrency, assesses the risks, and recommends the creation of a unified international legal framework regulating relations in the cryptosphere. It also separately identifies the directions of development of the virtual asset market in Ukraine and highlights the legislative initiatives of some foreign countries to create national digital currencies. The article clarifies the threats and risks of using virtual assets, in particular cryptocurrencies, outlines global trends in their development, and suggests ways to improve the legislative support for the circulation of virtual assets in Ukraine.

**Key words:** cryptocurrency, virtual assets, bitcoin, electronic money, legal regulation, economic activity, Civil Code of Ukraine, Commercial Code of Ukraine, Tax Code of Ukraine, cryptocurrency “mining”.

### 1. Introduction

Today, the legal regime of virtual assets in Ukraine still remains uncertain, as even the Law of Ukraine “On Virtual Assets”, which

is intended to regulate legal relations arising from the turnover of virtual assets in Ukraine, has not yet entered into force and is subject to constant criticism (On virtual assets, 2022).

Today, Ukrainians are the most active cryptocurrency users in the world. Various Ukrainian companies offer relevant services and sell goods in cryptocurrency, and individuals buy and sell property for cryptocurrency units. There are many cryptocurrency exchanges, online services, and crypto ATMs in Ukraine (Coin Market Cap website). The proliferation of cryptocurrency transactions in the market has raised many regulatory issues. As a result, national legislators have begun to want to regulate relations in this area. It is believed that the issue of taxation of profits and income derived from transactions with virtual assets is particularly relevant and requires legislative regulation. Therefore, it is necessary to resolve a number of issues and eliminate gaps in the circulation of virtual assets. Without addressing these issues, a huge portion of the income generated from these transactions would remain outside the scope of taxation. Researchers have already proposed to legitimize cryptocurrency mining operations, recognize mining as a type of economic activity and introduce taxation of income from it (Derevianko, 2018, p. 169).

The development of effective regulatory approaches to the execution, accounting, declaration and taxation of cryptocurrency transactions is a topical issue. It is also important to determine the legal status of this financial instrument. These issues are the subject of this study.

*Literature review.* The emergence and development of cryptocurrencies have been studied by various scholars in their works. Scientists associate cryptocurrency as an evolutionary process in the financial environment, but some consider cryptocurrency in economic circulation as an offense. In the course of their research, domestic scientists raise the issue of cryptocurrency accounting, while others actualize the issue of transactions with it and the receipt of income and expenses incurred, but they all offer their own approaches to controlling transactions with such assets. For example, Skrypnyk defined the legal status of cryptocurrencies as objects of civil rights and objects of civil legal relations (Skrypnyk, 2018), Kovalchuk identified financial and legal shortcomings in the regulation of the cryptocurrency market (Kovalchuk, 2021), Ivakhno and Romanchuk outlined the problems of regulating cryptocurrency circulation in Ukraine (Ivakhno and Romanchuk, 2023), Usatenko and Makurin identified and analyzed the legal regulation of income from cryptocurrency transactions, determined the legal status of modern banknotes in Ukraine and abroad (Usatenko and Makurin, 2020). Ilchenko studied the use and circulation of cryptocurrencies (Ilchenko, 2022). Hudima and other authors have accounted for cryp-

tocurrencies, transactions with them, income received and expenses incurred, and proposed measures to control asset transactions (Hudima et al., 2020). Derevianko pointed out various risks in cryptocurrency transactions – technical risk, legal risk, economic and legal risk, technological risk, and others (Derevianko, 2017, p. 38), and also determined that cryptocurrency mining operations have significant similarities with economic activity (in particular, four of the five characteristics of a business entity are fully inherent in “miners”) (Derevianko, 2018, p. 166). However, there is still no effective legislation on cryptocurrency in Ukraine, and the cryptocurrency sphere has been operating for several years. This indicates the need for a separate study.

*Purpose.* The purpose of the article is to analyze the regulatory and practical provisions, considerations and conclusions of scholars regarding the circulation of cryptocurrency in Ukraine and to provide proposals for improving the regulatory support of these processes.

*Research methods.* The study of relations with cryptocurrency was conducted using well-known research methods: analysis and synthesis, grouping method, system-functional method, comparative legal method, scientific abstraction, and others, which were used to review legal relations with cryptocurrency, make conclusions and suggestions.

## **2. Defining the essence of cryptocurrency and attempts to regulate relations with it**

Global changes in worldwide financial processes point to the possibility of introducing a single world currency. Cryptocurrencies may become such a currency, as they meet many of the criteria of money. Electronic money has the legal regime of a legally defined issuer, a fixed supply, and is subject to regulation and supervision. Cryptocurrency, as defined by the European Central Bank, is a decentralized digital measure of value that can be expressed digitally and function as a means of exchange, store of value or unit of account based on mathematical calculations and resulting from them, and has cryptographic accounting protection (Kobylnik, Bezpalko, Shapoval, 2023, p. 365). The concepts of cryptocurrency (virtual currency) and electronic money differ significantly and have different meanings.

With the rapid development of the digital economy, cryptocurrency can be considered one of its products. The emergence of which is due to the development of blockchain technology and is caused by the state's monetary system, imperfect legal framework, problems of investor protection, inflation, strict currency restrictions on the purchase of foreign currency, and excessive state control (Kovalchuk, 2021, p. 32).

Regulation of the cryptocurrency market at all stages will lead to significant budget revenues. This will allow for additional funding for education, medicine, sports, and other socially important areas of life.

For the cryptocurrency market to function efficiently and fully, a regulatory environment needs to be created. It will provide an opportunity to regulate various important aspects of its activities: the legal status of digital assets, the possibility of making payments in cryptocurrencies, taxation, and the operation of exchange platforms. The general practice of regulating the cryptocurrency market defines the following approaches: economically oriented; risk minimization approach; surveillance approach; restrictive approach (Kovalchuk, 2021, p. 33). After the implementation of the above methods, we can expect real and long-term use of cryptocurrencies.

The cryptocurrency market in Ukraine can be considered as a separate sphere of social relations, but the state has not yet established its direct regulatory powers. It is also necessary to define separate rights and obligations, areas of responsibility of legal entities and individuals engaged in this activity (Usatenko and Makurin, 2020, p. 195). To summarize, it is necessary to specifically define the causes and consequences and the area of responsibility for all those involved in cryptocurrency transactions.

Today, an agreement between two legal entities to ship goods and pay for them with cryptocurrency is impossible because it has no legal force, this issue is not regulated by law, and bitcoin is not recognized as a means of payment. Therefore, it is necessary to make appropriate clarifications in Ukrainian legislation (Makurin, 2019, p. 204). It is necessary to analyze the legal regulation of cryptocurrency transactions and assign responsibility to the relevant institutions.

On February 17, 2022, the Law of Ukraine "On Virtual Assets" was adopted, which assumes the responsibility of regulating the crypto industry. Unfortunately, this Law has not entered into force, as it is expected to take effect only after the tax regulation of all processes (On virtual assets, 2022). The NAPC (National Agency on Corruption Prevention) has provided clarifications on how to declare intangible assets. The courts, in turn, use this explanation when making decisions and refer to the principle of analogy of law, since there is no relevant law. The decisions establish that the circulation of cryptocurrencies in Ukraine is legal and not prohibited, as this determines the general state approach to regulating the circulation of cryptocurrencies. The NBU has imposed restrictions on international money transfers and limited cryptocurrency transactions. When the law

actually comes into effect, cryptocurrencies will acquire the status of "permissive assets". This means that it will not be used as legal tender in Ukraine, it will not be allowed to be exchanged and it will not be possible to pay for goods or services with it.

Currently, the use of virtual assets is becoming more widespread and is having an impact on the modern economy. Cryptocurrencies are becoming increasingly popular in Ukraine (Spilnyk and Yaroshchuk, 2020, p. 83). Therefore, the state seeks to regulate legal relations related to the circulation of cryptocurrencies and join the countries that seek to legislate and derive electronic assets from the shadows.

To summarize, the currently inoperative Law "On Virtual Assets" is intended to legalize the virtual asset market in our country and is appropriate to the legal reality of Ukraine. Prior to its adoption, there was a need to resolve the issue of whether cryptocurrencies are legal tender in Ukraine. It is worth noting here that according to Part 4 of Article 7 of the Law "On Virtual Assets", virtual assets are not a means of payment in Ukraine and cannot be exchanged for property/goods, works/services (On virtual assets, 2022). The hryvnia is the monetary unit of Ukraine and is the only legal tender that is accepted at face value throughout Ukraine. In order to make a payment using a virtual asset, it must be converted into hryvnia. At the same time, virtual currencies do not fully comply with the design that embodies a combination of all the functions of money. Virtual currencies are able to provide the function of a medium of exchange to a limited extent, as they have a low level of acceptance among users. Another disadvantage of cryptocurrencies is their high volatility. The value of cryptocurrencies is not stable, so it can change instantly, which makes investing in the currency more risky.

### **3. Multiplicity of relations with cryptocurrencies and prospects for their development in Ukraine and the world**

Currently, Ukraine faces a major problem in regulating legal relations with cryptocurrencies. The main reason for this is the lack of relevant legislation that could be applied to them. The circulation of cryptocurrencies should not contradict the main legislative and regulatory acts, such as: The Constitution of Ukraine, the Civil Code of Ukraine, the Commercial Code of Ukraine, the Tax Code of Ukraine, the Law of Ukraine "On Information", as well as regulations of the NBU and other laws of Ukraine. According to many experts, the most effective regulatory model is to integrate cryptocurrencies into the current legislation of Ukraine by adopting a separate law and amending a number of regulations.

Participation of self-regulatory organizations of the cryptocurrency market in state regulation to secure their legal status and participate in co-regulation may also be an effective option for regulating relations with regard to cryptocurrencies and controlling their use. In addition, an important role can be played by acts of a recommendatory nature for participants in the cryptocurrency market (especially ordinary consumers as their most vulnerable category), adopted by the authorized bodies with the participation of these self-regulatory organizations, which should help protect the interests of such persons in difficult relationships (Vinnyk, Popovych, Derevianko, 2022, p. 189). To enable the regulation of cryptocurrency circulation and the recognition of its legal status, it is necessary to develop a common position among government agencies. The NBU should find a common language with the Ministry of Finance of Ukraine, the State Fiscal Service of Ukraine, the State Financial Monitoring Service, the National Securities and Stock Market Commission, and the National Commission for the State Regulation of Financial Services Markets (Mandryk and Moroz, 2019, p. 69). Once a common strategy has been determined, the first step is to determine the legal status of cryptocurrency. Cryptocurrencies are different from traditional assets, so it is not possible to unambiguously classify them as a particular object of civil rights. Cryptocurrencies have a complex digital nature, and this does not allow them to be unambiguously recognized as either money, currency, means of payment of another country, currency value, electronic money, securities or a monetary surrogate.

Today, there are thousands of types of cryptocurrencies (more than 5000 according to major websites). But there are 10 leading cryptocurrencies that account for almost 90% of the total market capitalization. At the same time, Bitcoin alone accounts for 59% of the total market capitalization of these leading currencies (Bagshaw, 2019). And the vast majority of cryptocurrencies are not fully used, are not in demand, and are considered irrelevant (Nakamoto, p. 1). There is no stable cryptocurrency, so the list of leading cryptocurrencies is changing. The reason is that the relevance of one or another type is influenced by many different factors, so it is important to control the volatility of cryptocurrencies in general. While the average daily volatility of fiat money usually does not exceed 3–4%, cryptocurrencies are subject to exchange rate fluctuations within 20%, sometimes they reach up to 50%, and in some cases, the exchange rate deviation exceeds 100% during the day (Coin Market Cap website). Ukraine has a stable position in the global

crypto community and is one of the leading countries in the development of the crypto economy. One of the current projects implemented is based on blockchain technology. The non-governmental organization “Bitcoin Foundation Ukraine” is a powerful cryptocurrency community that believes that Ukraine is among the top 10 countries in the world in terms of the number of bitcoin holders.

#### **4. Possibility of regulating relations with cryptocurrency using foreign experience**

It goes without saying that cryptocurrencies have great potential provided by cryptography. Therefore, in order to develop and realize this potential, it is necessary to increase the level of trust, effectively scale the business and establish interaction with regulatory authorities (Ilchenko, 2022, p. 195). That is, to create a friendly environment between the interacting authorities. Appropriate legislative regulation of the circulation and definition of the legal status of cryptocurrencies is needed. Currently, there are no relevant clear recommendations from methodological bodies in the legal, accounting, and taxation spheres, so these issues cannot be resolved immediately. First, it is necessary to analyze foreign experience and implement it in our country. Legal uncertainty is the main problem. It is an opportunity for abuse and a brake on the country’s development. Today, participants in cryptocurrency transactions are unfortunately unprotected in the legal sense. After all, the civil and administrative law system lacks a proper working legal framework for considering such cases in court. At the same time, the state does not receive possible additional budget revenues, there are difficulties with taxation and accounting of transactions, tax evasion and abuse by unscrupulous regulatory authorities. These are the main examples of what happens in the absence of a working legal framework. Therefore, domestic lawmakers, regulators, and scientists need to more actively analyze the experience of other countries, study the scientific work of Western colleagues, and conduct their own research and apply it in practice.

An analysis of the international practice of legal regulation of cryptocurrency circulation provides sufficient evidence to state that such regulation is relevant and necessary for modern states. After all, the unregulated nature of such processes does not hinder the cryptocurrency business, but leaves the state without additional budget revenues and a promising platform for investment and slows down the development of the economy in the state. Therefore, we believe that the state needs to implement the following aspects in order to effectively regulate this issue:

- to analyze and identify mechanisms to minimize the risks associated with cryptocurrency transactions, in particular, to bring the regulation of these transactions in line with the legislation on combating money laundering and terrorism financing;

- to establish and determine whether cryptocurrency corresponds to any of the categories that have already been enshrined in national legislation;

- to decide specifically whether to define cryptocurrency as a legal tender or to give it only certain functions;

- develop a clear mechanism for taxation of cryptocurrency transactions with amendments to national tax legislation, taking into account the effective practice of European countries;

- establish and resolve the issue of licensing the cryptocurrency business, namely the activities of cryptocurrency exchanges and companies (Diadyk, 2020, p. 268). After the successful implementation of all these aspects, a mechanism for legislative regulation of cryptocurrencies will be formed. It is necessary to form a general state approach to the cryptocurrency market, which will provide a great opportunity for crypto exchanges to operate and conduct relevant transactions unrestrictedly and officially.

At present, the National Bank of Ukraine has imposed restrictions and is awaiting the entry into force of a law to regulate the cryptocurrency industry. But the state continues to interact with the crypto industry and European crypto exchanges (Ivakhno and Romanchuk, 2023). This makes it possible not to lose its own experience and successfully conduct cryptocurrency transactions after the legal framework is improved.

### 5. Conclusions

The use of virtual assets is becoming more and more widespread in the world, which cannot have a positive impact on the modern economy. In our country, virtual assets have also begun to spread rapidly. This fact has set new challenges for the Ukrainian legislator and the scientific community. The entry into force of the Law of Ukraine No. 2074-IX “On Virtual Assets” will allow us to effectively develop and regulate the virtual asset market in Ukraine. However, this regulatory act will only come into force from the date of entry into force of the Law of Ukraine “On Amendments to the Tax Code of Ukraine on Peculiarities of Taxation of Transactions with Virtual Assets”. It can be assumed that the text of the Law “On Virtual Assets” is no longer entirely relevant to the market, as it was developed more than two years ago and during this time our country has undergone changes on the path to European integration. Also, the modern virtual asset market is developing dynamically and actively, but, unfortunately, the full legalization of the virtual

currency market has not taken place, which is a negative factor. As a result, the processes of taxation of income from transactions with virtual assets remain virtually unregulated. In our opinion, the legislative regulation of the virtual assets market and the processes of taxation of income from transactions with such assets should be reviewed again to enable the Law of Ukraine “On Virtual Assets” to enter into force. It should be understood that the regulation of virtual assets is a complex and lengthy process that requires careful study and development of the relevant legal framework. An important task is to develop and implement regulatory mechanisms for the existence of virtual assets. These assets become an additional source of income for users and affect the financial stability and economic development of the state as a whole. The Ukrainian legislation should prioritize the taxation of virtual assets and actively continue to adapt the legal norms in this area.

The creation of a common global legal space regulating relations with cryptocurrencies will not only protect society from challenges and threats in this area, but will also open up new opportunities for the development of the digital economy. Despite numerous attempts in Ukraine to define the legal regulation of cryptocurrency circulation, this issue has not been fully resolved. We believe that Ukraine should be guided by the principles of cryptocurrency regulation established by The Financial Action Task Force (FATF) with adaptation to national legislation.

Thus, the analysis of the formation and development of legal regulation of cryptocurrency circulation leads to the conclusion that although many countries already have their own legal regulation of cryptocurrency, there is no single legal space for regulating digital currency in the world, as only the EU develops separate rules in the crypto sphere. We consider the development of a unified international legal regime and the introduction of general rules into national legislation to be a promising solution. Future research should be aimed at developing relevant provisions, including taking into account the provisions of foreign legislation.

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## РОЗВИТОК ВІДНОСИН У СФЕРІ ОБІГУ КРИПТОВАЛЮТ ТА ФОРМУВАННЯ ВІДПОВІДНОГО ЗАКОНОДАВСТВА В УКРАЇНІ

**Анотація. Мета.** Метою статті є аналіз нормативних і практичних положень, міркувань і висновків науковців у частині обігу криптовалюти в Україні і надання пропозицій до напрямів удоскона-

лення нормативного забезпечення цих процесів. **Методи дослідження.** Дослідження відносин із криптовалютою було проведено за допомогою застосування відомих методів дослідження: аналізу та синтезу, методу групування, системно-функціонального методу, порівняльно-правового методу, наукової абстракції та інших, за допомогою яких було проведено розгляд правовідносин із криптовалютою, зроблено висновки і пропозиції. **Результати.** У статті показано, що в правовому полі ще не створено нормативно-правової бази для регулювання відносин із криптовалютою, а тому в НБУ та інших фінансових установах переважає суперечливе та сумнівне ставлення до новацій грошового обігу. Закони, що прийматимуться в Україні, будуть направлені на легалізацію та регулювання відносин із криптовалютою та матимуть позитивний вплив на показники держбюджету. Криптовалюта в сучасних умовах економічного розвитку набула значення вагомому активу фізичних, юридичних осіб та державних органів. Використання криптовалют у фінансовому обігу показує сталу тенденцію до зростання та довіру користувачів. **Висновки.** Звернуто увагу, що в інформаційному суспільстві стрімко зростає роль правового регулювання процесів із застосування цифрових технологій. Таке регулювання має бути ефективним з різних боків та відповідати сучасним викликам і загрозам. Наведено дискусійні підходи для розуміння сутності криптовалюти та проблем правового регулювання її обігу. Розглянуто етапи становлення правового регулювання обігу криптовалюти в Україні. Проаналізовано законодавство, яке було розроблено та прийнято в Україні. Запропоновано різні правові підходи до розуміння сутності криптовалюти. Конкретизовано наявні проблеми правового регулювання обігу криптовалюти в законодавстві України та порівняно їх із практикою інших країн. Звернено увагу, що пошук найефективнішого правового регулювання відносин із криптовалютою пов'язаний як зі створенням оптимального правового поля, так і з розвитком криптовалютного бізнесу і децентралізацією обігу криптовалюти. У статті охарактеризовано формування міжнародно-правового режиму криптовалюти, надано оцінку ризикам, рекомендовано створення єдиного міжнародно-правового поля, що регулює відносини у криптосфері. Окремо визначено напрями розбудови ринку віртуальних активів в Україні та висвітлено законодавчі ініціативи деяких зарубіжних держав щодо створення національних цифрових валют. Уточнено загрози та ризики використання віртуальних активів, зокрема криптовалют, окреслено загальносвітові тенденції їх розвитку, запропоновано напрями вдосконалення законодавчого забезпечення обігу віртуальних активів в Україні.

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

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