



LEGAL REGULATION OF CRYPTOCURRENCY AND CRYPTOCURRENCY OPERATIONS IN THE EUROPEAN UNION

Zhelekhovska Tetiana

DOI: <https://doi.org/10.61345/1339-7915.2023.6.31>

Annotation. The article “Legal Regulation of Cryptocurrency and Cryptocurrency Operations in the European Union” offers a comprehensive examination of the evolving legal landscape surrounding cryptocurrencies within the European Union (EU). It begins by defining cryptocurrencies, highlighting their unique characteristics such as decentralization, volatility, and potential for misuse. These features pose significant regulatory challenges, as traditional legal frameworks may not be fully equipped to address them.

The article delves into the EU’s response to these challenges. It outlines the various legislative measures that have been implemented to regulate cryptocurrencies and related operations. These measures aim to strike a balance between fostering innovation in the digital economy and ensuring consumer protection and financial stability. The article discusses the implications of these regulations, noting that while they have brought some clarity and security to the sector, they also risk stifling innovation if not carefully calibrated.

The article explores the ongoing debates within the EU regarding the appropriate regulatory approach to cryptocurrencies. It underscores the need for a nuanced understanding of the technology and its potential impacts. The article argues that regulation should not merely react to the challenges posed by cryptocurrencies but should also anticipate future developments to remain effective and relevant.

The article concludes by emphasizing the importance of dialogue and collaboration among regulators, industry stakeholders, and the public in shaping the regulatory approach to cryptocurrencies. It suggests that such engagement can help ensure that regulations are not only responsive to current issues but also adaptable to future changes.

The article provides a thorough and insightful analysis of the legal regulation of cryptocurrency and cryptocurrency operations in the European Union. It underscores the complexity of the issue and the need for a dynamic and forward-looking regulatory approach. The article serves as a valuable resource for anyone interested in understanding the intricacies of cryptocurrency regulation in the EU

Key words: cryptocurrency, European Union, economy, finance, transactions, legal regulation.

1. Introduction.

In the rapidly evolving world of digital finance, cryptocurrencies have emerged as a significant player, presenting both opportunities and challenges. Nowadays the concept of cryptocurrencies has emerged as a significant phenomenon. The term “cryptocurrency” in the European Union (EU) context carries a unique meaning, shaped by the region’s specific regulatory and economic environment.

2. Analysis of scientific publications.

The issue of the legal regulation of cryptocurrency was considered in the scientific works of M.V. Grebenyuk, R.V. Lukyanchuk, B. Strilets, I. Spilnyk, O. Yaroschuk and others.

3. The aim of the work.

The aim of the article "Legal Regulation of Cryptocurrency and Cryptocurrency Operations in the European Union" is to provide a comprehensive analysis of the current legal framework governing cryptocurrencies and their operations within the EU. It seeks to elucidate the complexities and challenges posed by these digital assets and how the EU is responding to them.

4. Presenting main material.

The legal regulation of cryptocurrency in the European Union is a topic that causes a lot of discussion and controversy. In a unique system of the supranational type, which includes an association of 28 countries, each of which has certain peculiarities at the national level in the legal regulation of both traditional and cryptocurrency business, the European Union, the legal regulation of transactions with cryptocurrency has been put into flux, and carries a massive character due to its extensive use in the member states. This asset, separated from traditional financial instruments, constantly arouses special interest and creates the need for careful legal analysis.

The emergence of such a modern phenomenon as cryptocurrency is due to the appropriate level of development of information systems and information technologies, as well as the opportunities provided formed global information environment [1, p. 82].

Legal regulation of cryptocurrencies and related transactions in the European Union is important for the stability of the financial system and the protection of investors. The use of cryptocurrencies primarily optimizes implementation operations in the payment system, but active use of these of digital currencies, in addition to potential benefits, also dictates the occurrence of certain risks in the spheres of security and protection of rights consumers and prevention of financial crimes. Given the rapid expansion of this new asset class, there is a need to establish clear rules of the game that take into account both the innovative nature of cryptocurrencies and the needs of today's regulatory environment [2, p. 311].

Circulation of cryptocurrencies, investment and other economic activities with using distributed ledger technology are becoming integral components of the modern economy [3, p. 70].

Each state has sovereignty, national characteristics and a separate legal system. They have their own peculiarities of regulation of traditional and cryptocurrency business.

Although at the moment none of the bodies of the European Union has adopted special regulations for the regulation of cryptocurrency activities, the countries of the Union are considered to be among the most favorable for its use and holding.

For the first time, attention was paid to this area of activity in the European Union in 2012. Then the European Central Bank (published a report in which it stated that the traditional regulation of the financial sector could not be applied to bitcoin (bitcoin itself was defined in the document as a convertible decentralized virtual currency) [4].

In early January 2016, the European Commission announced its plans to strengthen reporting standards for cryptocurrency exchanges and companies that provide cryptocurrency wallets to users ("crypto wallet providers"). In particular, the European Commission intends to oblige European cryptocurrency exchanges and providers of cryptocurrency wallets to carry out mandatory identification of users [5].

In January 2016, the European Parliament held public hearings on digital currencies. One of the participants in the hearing, a representative of the budget committee of the European Parliament, commenting on the position of the regulator, said that the European Parliament is inclined to the fact that it is necessary to continue monitoring the situation surrounding digital currencies [6].

Over time, the competent authorities and officials concluded the need to speed up the process of regulating the circulation of cryptocurrency. As a result, in July 2016, the European Commission proposed to adopt a directive that would oblige cryptocurrency exchanges and cryptocurrency wallet providers to comply with the requirements of Directive 2015/849/EC on the prevention of the use of the financial system to launder criminal proceeds and finance terrorism.

In particular, it is proposed to ensure mandatory registration or licensing of cryptocurrency exchanges that exchange cryptocurrency for fiat money and vice versa, and companies that provide cryptocurrency wallets to users. In addition, it is planned to create a central database with information about users of digital currencies [7].

In August 2016, the European Banking Authority published an opinion on the proposed directive. According to the above-mentioned document, provisions on the collection of personal data should be more strict, and European regulators should be able to impose sanctions on cryptocurrency exchanges and providers of cryptocurrency wallets that do not comply with the established rules [8].

In September 2017, the European Parliament amended EU Directive 2015/849 of May 20, 2015 "On preventing the use of the financial system for the purpose of money laundering and terrorist financing" [9].

In particular, from now on cryptocurrencies are subject to the same obligations as other financial services in the European Union. Operators and cryptocurrency exchanges will now be required to verify users and monitor transactions in the same way as the administration of "traditional" financial services. At the same time, the lower threshold for user identification is reduced from 250 to 150 euros.

Despite successful attempts to regulate the activities of entities in the field of cryptocurrency circulation, European regulators have not yet unified their attitude regarding the financial and legal nature of cryptocurrency.

It is also important to note that often the competent authorities and officials of European countries do not use the term "cryptocurrency" as such. Here it is customary to call it a virtual currency, and in such cases it is considered as a means of payment. In particular, this is evidenced by the European Commission's proposal to establish additional regulation for cryptocurrency exchanges and cryptocurrency wallet providers through the adoption of a separate directive.

In general, the regulation of cryptocurrency operations in the EU is quite a complex task, since cryptocurrencies are decentralized and globalized, and their use is very diverse and innovative.

Speaking about the real use of cryptocurrency and the attitude of each EU member state individually. It should be noted that such digital assets occupy more and more space. In many European countries (Spain, Portugal, Switzerland, etc.), Bitcoin ATMs (bitkoinomat) legally exist - ATMs where you can exchange VTS for fiat money.

Taxes on digital currency and operations with it, which are accepted in each individual state within the European Union, are regulated individually by legislation. It depends on the origin of cryptocurrency transactions.

For the purposes of taxation, each electronic currency is considered, as a rule, in the role of an intangible asset or commodity. In this case, it is not a currency or means of payment.

In particular, the biggest factor affecting this is the lack of a single definition and legal status of cryptocurrency in the European Union. Each EU member state has its own rules and approaches to cryptocurrency, which may conflict with the European ones.

Some countries consider cryptocurrency a means of payment, others – a property asset, and still others - a financial instrument. For example, in Bulgaria, digital currency acts as a financial instrument and is fully taxable, in accordance with the law, and Austria considers cryptocurrency as an intangible asset, and its Mining is an operational activity.

As for Germany, cryptocurrency is officially considered an equivalent means of payment and is exempt from value added tax (VAT) in cases of transactions with cryptocurrency, but there is a tax on the income of individuals from the sale of cryptocurrency. In 2013, the Federal Financial Supervisory Authority defined cryptocurrencies as “private funds” that can be used as payment and replace traditional currency in civil law contracts. Thus, the Ministry of Finance made a decision to recognize the bitcoin cryptocurrency as an official means of payment. At the same time, for commercial purposes, activities with the specified cryptocurrency require obtaining a special permit (license), such organizations become subject to the control of the Federal Office for Financial Supervision [10].

France, on the other hand, considers cryptocurrency a property asset and charges capital gains tax on the sale of cryptocurrency.

According to analysts, Switzerland is considered to be the most favorable laws for the circulation of cryptocurrencies. The Swiss cryptocurrency exchange ECUREX GmbH is currently the world’s first exchange platform for cryptocurrencies for fiat money, which fully complies with the regulatory requirements of the Swiss Banking Act. In addition, transactions with cryptocurrencies in this country have been exempted from value added tax - according to the Swiss Bitcoin companies’ response to the Swiss Federal Tax Administration, transactions with cryptocurrencies have been recognized in this country as a means of payment, and not transactions for the provision of services or goods [11].

Due to the fact that there is currently no uniform tax status of cryptocurrency in the EU, and each country can apply its own rules to the taxation of cryptocurrency earnings. This causes quite a few problems with their legal regulation, especially in the context of transnational operations.

It can be concluded that in different EU countries the approach to the legal status of cryptocurrencies differs significantly – some countries have recognized the expediency of their use and are working on the formation of a legal framework that would establish the legal status of virtual currencies (as electronic money, as means of exchange, as a specific type of currency, etc.), and other countries reject cryptocurrencies and prohibit their circulation.

However, despite the ban on cryptocurrencies in some countries, their circulation in the virtual space continues to grow. A legal ban on the use of cryptocurrencies will not restrain the processes of its use, but will only prevent states from taking part in regulating the processes of use of such currency. If the state only prohibits the use of cryptocurrencies, it will exclude itself from the process of their circulation.

Jurisprudence regarding the circulation of cryptocurrencies in the EU member states is quite broad. Despite the lack of a unified approach to the financial and legal nature of cryptocurrency, national courts prioritize the protection of the fundamental rights and freedoms of citizens. We are talking about the protection of property and the procedure for recovery of damages in case of improper performance of the contract between the parties.

Due to the rapid development and emergence of new types of cryptoassets, such as tokenized assets, stablecoins, decentralized finance (DeFi), etc., there is a significant insufficiency of the existing rules for their regulation. These crypto-assets have their own characteristics and risks, which require adaptation and innovation in legal regulation.

In particular, such financial diversity makes it difficult to fight money laundering and terrorist financing through cryptocurrency.

The EU is trying to introduce mandatory licensing or registration of cryptocurrency exchanges and e-wallet providers, as well as create a central database of cryptocurrency users. However, these measures have met with criticism from the European Central Bank (ECB), which believes that the definition of “virtual currency” is imperfect and does not reflect the essence of cryptocurrency as a means of exchange, not payment.



Cryptocurrency can pose money laundering risks because it allows for anonymous and cross-border transfers that are difficult to monitor and regulate. This can facilitate the financing of terrorism, tax evasion, corruption and other criminal activities. In addition, cryptocurrency can compromise financial security and stability as it is subject to high volatility, speculation, hacking and theft. Finally, cryptocurrency can cause legal uncertainty and uncertainty because it lacks a single standard of regulation and recognition across countries and jurisdictions.

In general, the European Union has not yet implemented specific directives specifically intended to regulate cryptocurrencies. However, some initiatives and legislative actions are constantly taking place, which created the basis for consideration and regulation of cryptocurrencies within the EU.

In this context, it is important to note Directive 2018/843 (also known as the fifth directive on combating the use of the financial system for money laundering and terrorist financing (AMLD5)).

This directive, which was adopted in 2018, extends the obligations regarding the identification of customers and the monitoring of financial transactions to the service providers of cryptocurrency exchanges and electronic wallets.

The main changes introduced by AMLD5 are to expand the scope of entities that are required to comply with the directive to include virtual asset service providers, custodial wallets and art dealers who carry out transactions or series of transactions of €10,000 or more. There are also some changes to strengthen customer identification and customer due diligence (CDD) requirements, including the use of eIDAS-compliant electronic identification and the establishment of additional Enhanced Customer Due Diligence (EDD) measures for high-risk customers and countries. There have also been changes to the creation and maintenance of an up-to-date list of prominent public positions relating to politically significant persons (PEPs) and the regulation of cryptocurrencies and prepaid cards, lowering the thresholds at which CDDs must be conducted and the creation of a new anti-money laundering agency that will have powers to oversee cryptocurrency platforms and service providers [12].

According to researchers and specialists, a fairly large role in the legal regulation of the cryptocurrency market should be played by MiCa, which is the first regulatory framework in the EU in the field of cryptocurrencies, which focuses on consumer protection, financial stability and innovation by establishing clear standards for market participants. MiCA regulation in the EU aims to simplify licensing, control stablecoins and improve anti-money laundering measures [13].

The regulation of MiCA cryptocurrency asset markets is set to become an important regulatory framework developed by the European Union, which reached a consensus in October 2022. Ratified by the European Parliament on April 20, 2023, MiCA is the first framework of its kind in the world to provide clear guidelines and standards for cryptocurrency market participants to ensure consumer protection and maintain market integrity.

MiCA is scheduled to be implemented between mid-2024 and early 2025, potentially making Europe the first region to introduce this type of regulatory framework. By creating a standardized approach, MiCA aims to support innovation and growth in the cryptocurrency market while eliminating potential risks and challenges.

Currently, MiCA represents an important and comprehensive initiative to regulate the growing cryptocurrency market in the European Union. Through standardized rules, this framework aims to balance consumer protection, market integrity and innovation, and to help create a safer, more transparent and accountable environment for the crypto market [14].

So, it can be said that the legal regulation of cryptocurrencies and cryptocurrency operations within the European Union and its member states are at an initial stage.

The dynamic and constant development of cryptocurrency as an object of legal regulation requires the improvement of the regulator itself and its methods. The ability to create, implement and exercise effective control over digital currency in our time is an important factor in the development of the national economy of the state itself.

5. Conclusion.

In conclusion, the legal regulation of cryptocurrency and cryptocurrency operations in the European Union is a complex and evolving issue. As cryptocurrencies continue to gain popularity, the need for clear and comprehensive regulations becomes increasingly apparent. The EU has made significant strides in this regard, striving to balance the promotion of innovation with the protection of consumers and the integrity of the financial system. However, the unique challenges posed by cryptocurrencies, such as their decentralization, volatility, and potential for misuse, necessitate ongoing regulatory attention and adaptation. As the EU continues to navigate this dynamic landscape, it is crucial that it remains open to dialogue and collaboration with stakeholders, and stays informed of technological advancements to ensure that its regulatory approach remains effective, proportionate, and forward-looking.

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Tetiana Zhelekhovska,
student, Faculty of International Relations,
“Ivan Franko National University of Lviv”
E-mail: tetiana.zhelekhovska@lnu.edu.ua
ORCID: 0009-0009-5234-8256