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CRYPTOCURRENCY MARKET REGULATION IN UKRAINE

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Abstract. Law, as the main regulator of social relations, should objectively keep up with their rapid modern changes, respond to the fact that new relations are emerging based on the latest digital technologies. Cryptocurrency, as the general name of the latest technologies, is a new factor that affects economic relations more and more every year. During the last five years, when many countries have already actively begun to include the legal regulation of cryptocurrencies in the framework of national legislation, Ukraine remained aloof from this law-making process. However, every year it became more and more obvious that such a state policy would only lead to lagging behind other states in the development of the latest technologies. Since the beginning of 2022, the understanding of the need for the development of digital technologies, including with the help of adequate legal regulation of "cryptocurrency" in Ukraine has begun.

Keywords: *cryptocurrency, virtual assets, crypto exchange, crypto companies.*

Cryptocurrency is a type of digital currency, the emission and accounting of which is performed by a decentralized payment system in a fully automatic mode (without the possibility of internal or external administration). Each cryptocurrency is built on blockchain technology, in which asymmetric encryption is used to verify authority (information protection), and other cryptographic methods are used as proof of work performed and/or Proof-of-stake (proof of keeping a certain amount of funds in the account). Verification and confirmation of transactions in the block chain is carried out using cryptocurrency mining [6].

The Legislation of Ukraine has come a long way from not recognizing cryptocurrencies to trying to legally regulate this area. Thus, in 2014, in an explanatory letter from the National Bank of Ukraine, the Bitcoin cryptocurrency was defined "as a monetary surrogate that does not have real value and cannot be used by individuals and legal entities on the territory of Ukraine as a means of payment, as it contradicts the norms of Ukrainian legislation ". Among the negative factors, the broad possibility of "illegal actions, including laundering of funds obtained through criminal means or financing of terrorism" was noted.

The signing of the Law of Ukraine No. 2074-IX "On Virtual Assets" on March 15, 2022 by the President of Ukraine was an important step towards determining the legal status and de-identification of the cryptocurrency market. However, the Law will enter into force only from the date of entry into force of the Law of Ukraine "On Amendments to the Tax Code of Ukraine on the Features of Taxation of Transactions with Virtual Assets". The Ministry of Digitization is actively working on amendments to the Tax and Civil Codes to ensure the full launch of the virtual assets market and the entry into force of the Law. This law is basic and defines the legal status of virtual assets, thereby providing legal protection to users and market participants. In this way, foreign and Ukrainian crypto exchanges will officially work, and banks will open accounts for crypto companies. In addition, this means that Ukrainians will be able to declare their income in virtual assets.

The legislation of Ukraine on virtual assets, as stated in Article 3 of Law No. 2074-IX, consists of the Constitution of Ukraine, international treaties, the binding consent of which was given by the Verkhovna Rada of Ukraine, the Civil Code of Ukraine, this Law, the Law of Ukraine "On Prevention and Counteraction of Legalization (Money Laundering)) incomes obtained through criminal means, financing of terrorism and financing of proliferation of weapons of mass destruction" and other laws, as well as regulations adopted for their implementation [1].

With the entry into force of Law No. 2074-IX, in accordance with Clause 3 of Section VI of the Final and Transitional Provisions, amendments are only made to the following legislative acts of Ukraine: the Law of Ukraine "On the National Bank of Ukraine"; the Law of Ukraine "On Banks and Banking Activity"; the Law of Ukraine "On Financial Services and State Regulation of Financial Services Markets"; the Law of Ukraine "On Protection of Consumer Rights"; the Law of Ukraine "On the permit system in the field of economic activity"; Law of Ukraine "On Prevention of Corruption"; the Law of Ukraine "On Currency and Currency Transactions"; The Law of Ukraine "On Prevention and Combating the Legalization (Laundering) of Criminal Proceeds, Financing of Terrorism and Financing of the Proliferation of Weapons of Mass Destruction"; The Law of Ukraine "On prevention and countermeasures against the legalization (laundering) of criminal proceeds, the financing of terrorism and the financing of the proliferation of weapons of mass destruction." [1]

In Ukraine, according to the Law "On Virtual Assets" No. 2074-IX dated February 17, 2022, cryptocurrencies are considered as virtual assets - intangible goods that are the object of civil rights, have value and are expressed as a set of data in electronic form. They can be both secured and unsecured. The first of

them testify to material well-being, and the second do not. Storage, exchange, transfer, purchase and sale operations are permitted with virtual assets, however, they are not a means of payment on the territory of Ukraine and cannot be the subject of exchange for property (goods), work (services). The law stipulates that in Ukraine: foreign and Ukrainian crypto exchanges will operate legally; banks will open accounts for crypto companies; Ukrainians will be able to defend their savings in virtual assets in court. The specifics of taxation of these assets will be determined after appropriate changes are made to the Tax Code of Ukraine, and before that, taxes on cryptocurrency should be collected according to general rules [1].

However, when the law was adopted, no changes were made to the Civil Code of Ukraine regarding virtual currencies as a type of intangible goods. Section III "Objects of civil rights", Chapter 12 "General provisions on objects of civil rights", Article 177: "Types of objects of civil rights": "Objects of civil rights are things, including money and valuable papers, other property, property rights, results of work, services, results of intellectual and creative activity, information, as well as other tangible and intangible goods" [3].

There are also no clarifications in the concept of intangible goods, which are set forth in the Civil Code of Ukraine, Chapter III "Objects of civil rights", Chapter 15 "Intangible goods", Article 199 "Results of intellectual and creative activity": "1. The results of intellectual, creative activity and other objects of intellectual property law create civil rights and obligations in accordance with the fourth book of this Code and other laws." [3]

Currently, the Verkhovna Rada has registered the Draft Law of Ukraine "On Amendments to the Civil Code of Ukraine aimed at expanding the scope of civil rights" (reg. No. 6447 dated 12/17/2021), which provides, in particular, for expanding the list of civil rights intangible goods that are in circulation only in digital form and the introduction into the Ukrainian legal reality of a new category of objects of civil rights - digital things, a type of which it is proposed to consider virtual assets. This brings to life the question of the essence of virtual assets as varieties of digital things and the feasibility of introducing the category of digital thing as a whole.

The legal imperfection of the concept and legal nature of virtual assets will contribute to various misunderstandings in law enforcement activities. And in order to avoid such complications when using virtual assets in the future, when resolving legal disputes, looking at a large number of varieties of virtual assets, it is necessary to improve Law No. 2074-IX.

The Law "On Virtual Assets" specifies that virtual assets can be the subject of legal proceedings, but are not a means of payment on the territory of Ukraine

and cannot be the subject of exchange for property (goods), work (services), unlike the definition of a virtual asset in the Law "On the prevention and counteraction of legalization (laundering) of income." where the very definition of a virtual asset indicates the possibility of use for payment purposes [2].

Ownership of a virtual asset is acquired by the fact of creation of a virtual asset, execution and execution of a transaction related to a virtual asset, based on the norms of the law or a court decision and is evidenced by the possession of the key of such a virtual asset. However, possession of the key (a set of technical means implemented in the system for ensuring the turnover of virtual assets, which makes it possible to control the virtual asset) of such a virtual asset does not guarantee the right of ownership. Exceptions are provided by the Law No. 2074-IX: 1) the key of the virtual asset or the virtual asset is kept by a third party in accordance with the terms of the transaction between the custodian and the owner of this virtual asset; 2) the virtual asset is transferred for safekeeping to any person in accordance with the law or a court decision that has entered into force; 3) the key to the virtual asset was acquired illegally by a person [1].

Article 23 of Law No. 2074-IX provides for the responsibility of service providers related to the turnover of virtual assets. It should be noted that liability concerns only fines, neither administrative nor criminal liability is provided for and changes to the relevant codes are also not provided for, which makes abuse by service providers possible [1].

In Ukraine, according to the Concept of State Regulation of Operations with Cryptocurrencies, the National Commission for Securities and the Stock Market will ensure that participants in the virtual assets market comply with the requirements of the FATF, the norms of the Civil Code and the law "On Virtual Assets". It will form and implement not only policy in the field of virtual assets, but also determine the order of circulation of virtual assets. The Ministry of Digital Transformation and, in part, the NBU are tasked with identifying users and identifying suspicious transactions, in accordance with FATF requirements, in particular the exchange of hryvnias for bitcoins and vice versa in the BitCoin24 exchange of PrivatBank, which also allows you to withdraw bitcoins to the cards of many banks of Ukraine and to the payment system Visa.

In general, the Law "On Virtual Assets" is the right direction to create a basis for legal regulation of the crypto industry and show the intention to promote the development of virtual assets, introduces new opportunities for the development of the economy of Ukraine, replenishment of the state budget from taxes in the future, the appearance of new players in the services market, although needs additions and refinements.

The adoption of the Law of Ukraine "On Virtual Assets":

- will contribute to the effective development of the virtual assets market;
- will provide an opportunity for citizens and enterprises on the territory of Ukraine, who actually own virtual assets, to dispose of them in accordance with the current legislation;
- will contribute to the development of the market infrastructure of virtual assets on the basis of already available global experience, the construction of fundamentally new regulatory mechanisms, concepts and approaches in Ukraine;
- will ensure the possibility of providing safe and high-quality services to the participants of the virtual assets market;
- will create the necessary prerequisites for the use of advanced technologies by the executive authorities of Ukraine, in particular distributed registry technologies and its implementation in the work of state registries in Ukraine;
- will contribute to the increase of investments in the economy of Ukraine, in particular by increasing the confidence of domestic and foreign investors as a result of the introduction of civilized and unified rules for the circulation of virtual assets;
- will reduce the share of the shadow economy associated with investments in virtual assets of citizens and enterprises in Ukraine.

Ukraine should create a system of administrative and legal regulation of the cryptocurrency market, which will include: legislative acts on the activities of cryptocurrency market participants; regulation of the rights and obligations of professional participants in the cryptocurrency market; Issuance of licenses for activities of crypto-exchanges and crypto-exchange operations, as well as to ensure control over such activities; to establish rules and standards for the provision of financial services on the cryptocurrency market and to monitor their compliance [7].

References:

1. The Law of Ukraine "On Virtual Assets" [Electronic resource] // Verkhovna Rada of Ukraine. – 2022. – Mode of access to the resource: https://zakon.rada.gov.ua/laws/show/2074-20#Text
2. The Law of Ukraine "On Prevention and Counteraction of Legalization (Money Laundering)) incomes obtained through criminal means, financing of terrorism and financing of proliferation of weapons of mass destruction" [Electronic resource] // Verkhovna Rada of Ukraine. –

2020. – Mode of access to the resource: https://zakon.rada.gov.ua/laws/show/361-20#Text
3. Civil Code of Ukraine [Electronic resource] // Verkhovna Rada of Ukraine. – 2003. – Mode of access to the resource: https://zakon.rada.gov.ua/laws/show/435-15#n1165
4. Tax Code of Ukraine [Electronic resource] // Verkhovna Rada of Ukraine. – 2011. – Mode of access to the resource: https://zakon.rada.gov.ua/laws/show/2755-17#Text
5. Law of Ukraine "On Electronic Documents and Electronic Document Management" [Electronic resource] // Verkhovna Rada of Ukraine. – 2003. – Mode of access to the resource: https://zakon.rada.gov.ua/laws/show/851-15#Text
6. Prokopenko, V. (2021) Legal regulation of cryptocurrencies in the world, LegalHUB, 13 September 2021, available at: https://legalhub.online/blogy/pravove-regulyuvannya-kryptovalyut-u-sviti (Accessed 01 June 2022). (in Ukrainian)
7. Kovalchuk, O. V. (2021) Administrative and legal regulation of the cryptocurrency market in Ukraine. Naukovyi chasopys NPU imeni M. P. Drahomanova. Seriia 18: Pravo, vol. 35, pp. 321-36. Available at: http://www.chasopys.law.npu.kiev.ua/archive/35/6.pdf [in Ukrainian].
8. Dmytrenko, T. L., Volkova, V. M. Peculiarities of regulation of transactions with virtual assets in the sphere of mining. Naukovi pratsi NDFI, no. 2, pp. 85-95 [in Ukrainian].