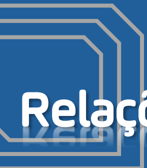
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LEGAL REGIME OF VIRTUAL CURRENCY IN UKRAINE: CURRENT STATE, PROBLEMS AND PROSPECTS OF REGULATION

REGIME JURÍDICO DA MOEDA VIRTUAL NA UCRÂNIA: SITUAÇÃO ACTUAL, PROBLEMAS E PERSPECTIVAS DE REGULAMENTAÇÃO

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ABSTRACT

Objective: 1. Analysis of the current legal status and legal regime of virtual currency in Ukraine. 2. Search for further ways of development and formation of a new regulatory environment of virtual currency in Ukraine.

Methodology: The methodology of the research is based on a set of general scientific, private and special methods of scientific knowledge.

Results: The key prerequisites for the application of effective regulatory approaches to transactions with crypto currencies and directions for building the legislative and regulatory framework for such transactions in Ukraine are presented.

Conclusion: It is established that: virtual currency is different from fiat currency; virtual currency differs from electronic money, because electronic money is always real currency with the status of legal tender and does not change the unit of account, but stores it in electronic form; virtual currency is a subcategory of digital currency. It is established that: that the development of the legal status of virtual currency should take into account the peculiarities of social relations related to its "life activity". The norms that regulate the legal status of virtual currency and the specifics of its circulation in the economy of Ukraine should be established at the legislative level.

Keywords: Legal regime; Legal status; Virtual currency; Cryptocurrency; Fiat money; Bitcoin

RESUMO

Objetivo: 1. Análise do actual estatuto jurídico e regime jurídico da moeda virtual na Ucrânia. 2. Procura de novas formas de desenvolvimento e formação de um novo ambiente regulador da moeda virtual na Ucrânia.

Metodologia: A metodologia da pesquisa é baseada em um conjunto de métodos científicos gerais, particulares e especiais de conhecimento científico.

Resultados: São identificados os principais pré-requisitos para a aplicação de abordagens regulamentares eficazes à implementação de operações com moedas criptográficas e as orientações para a construção de um quadro legislativo e regulamentar para tais operações na Ucrânia.

Conclusão: Está estabelecido que: a moeda virtual difere da moeda fiat; a moeda virtual difere da moeda electrónica, uma vez que a moeda electrónica é sempre uma moeda real com curso legal e não altera a unidade de conta, mas armazena-a em forma electrónica; a moeda virtual é uma subcategoria da moeda digital. Está estabelecido que o desenvolvimento do estatuto jurídico da moeda virtual deve ter em conta as peculiaridades das relações sociais relacionadas com a sua "actividade vital". As próprias regras que regulam o estatuto jurídico da moeda virtual e as especificidades da sua circulação na economia ucraniana devem ser estabelecidas a nível legislativo.

Palavras-chave: Regime legal; Estatuto legal; Moeda virtual; Moeda criptográfica; Fiat money; Bitcoin

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1 INTRODUCTION

In recent years, virtual currency (cryptocurrency) has become an integral part of global financial life, which forces countries to adapt to new realities by transforming their legislation in accordance with modern requirements. Nonetheless, despite the fact that virtual currencies were created by enthusiasts without the involvement of the state, as an alternative to "classic" currencies, they, like any other financial product, began to be used by criminals to conduct or to hide the traces of illegal activities. Recognition of the huge prospects for the use of virtual currencies by criminals is just beginning to be reflected in international and domestic legal acts aimed at regulating virtual currencies and the methodology of investigating crimes related to them.

Virtual currencies accelerate the efficiency and facilitate the implementation of various socially dangerous actions, one of which is the legalization (laundering) of proceeds of crime. Laundering "dirty" proceeds of crime, including that committed in the context of the use of virtual currencies, contributes to the criminalization of almost the entire system of social relations in modern Ukraine. This negative social phenomenon is the ground for the existence of organized crime, owing to which the proceeds from drug trafficking, human trafficking, arms trafficking, prostitution and other types of criminal business are laundered, and the control of which is inherent in organized and transnational organized crime.

Due to the increased danger of using virtual currencies in criminal activities and the growth of their influence (both positive and negative) on the global community, work aimed at finding adequate ways to integrate virtual currency into the established financial system is regularly carried out at the international level. In many developed countries, a fairly effective legal framework for regulating the use of virtual assets has already been created. As for our country, the specific law on digital assets in Ukraine has not yet been adopted, and the market itself continues to be outside the legal framework. The absence of a legislative component makes it impossible to formulate the concept of "cryptocurrency", the framework of its legal status and legal regime. Accordingly, there is no certainty regarding the order of circulation of virtual currencies. At the same time, taking into account the colossal increase in the number of cryptocurrency transactions and, as a result, increased risks, there is an objective need to establish a legal regime for this phenomenon.

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2 MATERIALS AND METHODS

The methodological basis of the research encompasses the provisions of dialectics as a general scientific method of cognition of the phenomena of objective reality, other general scientific and special methods, namely formal-logical, historical-legal, system-analytical, comparative, statistical methods. The use of the historical-legal method contributed to the study of the genesis of scientific research on the development of money and virtual currency, Ukrainian legislation on the circulation of cryptocurrency. The formal-logical method was used to determine the main directions of the formation of legislation regarding the legal regulation of the circulation of virtual currency in Ukraine. In order to formulate the main directions of the further formation of domestic legislation in this area, a comparative method was used in the course of the analytical review of the legal regulation of the circulation of virtual currencies in different countries.

3 RESULTS ANALYSIS

Money has traditionally been associated with three functions: a medium of exchange, a measure of value, and a means of accumulation. This is also based on the four key properties:

- issuer (central bank, other state body);
- form (digital or physical);
- accessibility (widely or restricted);
- transmission mechanism (centralized or decentralized).

Money in the form of a specific currency, in its "classic" sense, includes money in physical form (banknotes and coins, usually with the status of legal tender) and various types of electronic representation of money (for example, deposits that can be used for payments).

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Based on the above functions and properties, it is considered by the International Monetary Fund (IMF) that virtual currencies do not correspond to the legal concept of money and do not fulfill the role assigned to money (FATF, 2015). Apart from not contribuing to establishing the legal status of virtual currencies, this aproach also prevents their inclusion in the legal economy. Turning to European legislation, we can see that the development of legislation regarding virtual currencies is carried out in a narrow vector and is related to the prevention of the use of financial systems for the purpose of money laundering and terrorist financing. According to the statement of the European Central Bank (ECB), the legal definition of "virtual currencies" tends to vary depending on the context, e.g. taxation, the registration and licensing of market participants or anti-money laundering (ECB, 2015). At the same time, the main difference between cryptocurrencies and electronic money remains unchanged and consists in the fact that they do not have any special material or electronic form. It is simply a number that is written in the corresponding position of the information packet of the data transfer protocol, and does not carry any information about transactions between system addresses. Thereby, the information about the owners does not remain and does not exist in the system, which is a basic component of the anonymity of participants-users of virtual currency. In addition, cryptocurrencies lack centralized control or oversight in the form of a central bank or other regulator to act as a central administrator. These characteristics of virtual currency have led to its widespread distribution and use.

Despite the fact that virtual currencies emerged more than 20 years ago, their use was initially highly specialized and fragmented. Virtual currencies were mainly used to buy in-game items (game currency). The existence of a separate currency for each game limited the scope of its use to one game. However, everything changed in 2008, when the technical report "Bitcoin: A Peer-to-Peer Electronic Cash System" was presented to a narrow circle of cryptography specialists. Its author(s), using the pseudonym S. Nakamoto, proposed a new type of virtual currency, thoroughly describing the mechanism of operation of a secure electronic payment system that does not require a trusted third party as an intermediary to process payments of its participants. The report stated that bitcoins (as the virtual currency was named in the report) can be transferred directly to the participants of the transaction without the involvement of a bank or financial institution, without any national borders and in just a few minutes.

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The basis of Bitcoin Peer-to-peer (P2P) payment systems, like many others introduced by its example, is blockchain technology - a distributed ledger with a complete history of transactions, supported by a temporary (peer-to-peer) network, which guarantees the impossibility of double spending of the user's balance. The bitcoin blockchain along with the entire transaction history is accessible to everyone through the use of blockchain explorer tools. However, user privacy is secured on account of the anonymity of users' public keys. Blockchain users are not required to provide any personal information to participate in the Bitcoin network. They need to download and run an open and freely available bitcoin client and generate a new bitcoin address consisting of a public and private key that they can use to receive and send bitcoins. Bitcoin addresses are represented by a string of 26 to 35 characters and are not publicly linked to an owner.

As S. Nakamoto noted in his report,

> commerce on the Internet has come to rely almost exclusively on financial institutions serving as trusted third parties to process electronic payments. While the system works well enough for most transactions, it still suffers from the inherent weaknesses of the trust based model. Completely non-reversible transactions are not really possible, since financial institutions cannot avoid mediating disputes. The cost of mediation increases transaction costs, limiting the minimum practical transaction size and cutting off the possibility for small casual transactions, and there is a broader cost in the loss of ability to make non-reversible payments for non- reversible services. With the possibility of reversal, the need for trust spreads. Merchants must be wary of their customers, hassling them for more information than they would otherwise need. A certain percentage of fraud is accepted as unavoidable. These costs and payment uncertainties can be avoided in person by using physical currency, but no mechanism exists to make payments over a communications channel without a trusted party (Nakamoto, 2008).

As we can see, when S. Nakamoto created Bitcoin and the new technology of virtual money, he pursued completely virtuous goals related to the need to protect sellers by creating a system of completely irreversible transactions. The obtained result not only exceeded all expectations and had a significant impact on human society, but also, first of all, attracted the interest of representatives of illegal business, which led to the further existence of many virtual currencies.

Criminals swiftly realized the benefits that peer-to-peer payment systems could provide them due to their unique properties. Users of virtual currencies use pseudonyms, not names, virtual currencies can be transferred without intermediaries both within the country and abroad. The transfer itself according to labor costs is no

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different from sending an ordinary email. Thereby, virtual currencies began to be used not only for fair-white transactions, but also for transactions in the context of criminal activities due to the possibility of using virtual currencies for fast and international transactions directly between the sender and the recipient. Bitcoin became the only accepted means of payment on Internet black market platforms such as Silk Road, Agora, Evolution, where illegal goods or services were offered. Despite the fact that these platforms were liquidated, all others used their experience with using virtual currencies for mutual transactions.

In the Dark Web, preference is given to those platforms that offer higher level of personal data protection to their users. The use of decentralized technologies of temporary payments, presented in the form of virtual currencies, has led to the creation of serious problems for financial regulators and criminal prosecution bodies of both individual countries and international entities, since the existing rules for preventing the legalization (laundering) of proceeds of crime depend on intermediaries (banking and other financial institutions) aware of their customers' transactions. Immediately as intermediaries were excluded from the chain of transactions, the existing rules for preventing and countering the legalization (laundering) of proceeds of crime became ineffective.

After the mass spread of Bitcoin, regulatory bodies and institutions around the world began to note that virtual currencies were used as a means to pay for criminal activities. This thesis became central in many reports prepared by these bodies. For example, in 2012 and 2015, the European Central Bank (ECB) published documents (ECB, 2012; ECB, 2015), which revealed the essence of virtual currency and attempted to determine its legal status. Particular attention was focused on the fact that such payment units can be used by criminals, fraudsters and money launderers, which creates a problem for regulatory bodies. In 2013 and 2014, the European Banking Authority (EBA) published a number of warnings (EBA, 2014; ESMA, EBA, EIOPA, 2013) for its users, which indicated the risks related to the use of virtual currencies for anti-money laundering regulation. In 2014, the Financial Action Task Force on Money Laundering (FATF) published a report on virtual currencies (FATF, 2014), which also indicated potential risks for anti-money laundering (AML) regulation and countering the financing of terrorism (CFT) related to their use. In 2015, the FATF issued Guidance for national regulatory authorities and the private sector on combating money laundering and the financing of terrorism in the context of virtual currencies

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(FATF, 2015). In October 2018, the FATF issued the Recommendations with clarifications on "virtual assets", warning countries of the need to take urgent measures to prevent the use of such assets to finance criminal activities and terrorism. Countries must license and control "virtual asset providers" - exchanges, cryptocurrency wallet providers, and organizers of initial coin offerings (ICOs), which in turn must verify their customers. Fundamentally, the FATF proposes to build a system of control over virtual currencies in the same way as it operates in relation to electronic money, without understanding that the level of anonymity and confidentiality inherent in virtual currency makes such control difficult to implement in practice.

The evolvement of virtual currencies and related technologies provides great opportunities for individuals and legal entities to develop new business models, for governments to create more efficient and secure information systems, and for the financial inclusion of hundreds of millions of people who do not have easy access to the traditional banking system.

As suggested by S. Nakamoto, virtual currency and blockchain technology potentially constitute positive economic and social benefit. Nonetheless, the legalization (laundering) of crime proceeds using virtual currencies is a new type of illegal financing methodology. Based on this, if virtual currency as a new financial technology is going to realize its full potential, it is necessary to develop effective ways to counter the illegal risks associated with it, as was done with other types of payments (such as checks, credit cards, PayPal, etc.).

Today, the daily amount of transactions on the cryptocurrency market ranges between $50-60 billion. Despite the fact that the cryptocurrency market is recognized as very high-risk, the profitability of some of its types exceeds hundreds of percent. By the middle of 2021, the total market capitalization of cryptocurrencies that entered the stock exchange amount was $2,069 billion. However, due to crisis events all over the world, by the middle of 2022, the level of capitalization decreased to $995.7 billion. It is worth emphasizing the fact that Ukraine is among the top ten countries in the world in terms of the number of cryptocurrency users, and the daily volume of cryptocurrency trading using the hryvnia reaches $1.9 million. In addition, mining (the process of creating cryptocurrencies) in Ukraine has already exceeded the annual mark of $100 million. This circumstance and the subsequent deterioration of the economic component of our country led to the desire of the Cabinet of Ministers of Ukraine to collect taxes from the cryptocurrency market as well.

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There are numerous risks (both criminogenic and non-criminogenic) of working with cryptocurrency in Ukraine, since the Law of Ukraine "On Virtual Assets" dated February 17, 2022 No. 2074-IX has not yet entered into force, and the market itself continues to be illegal. It is impossible to formulate the concept of "virtual currency (cryptocurrency)", the framework of its legal status and legal regime without a legislative component. Accordingly, there is no certainty regarding the order of circulation of cryptocurrencies. At the same time, taking into account the massive increase in the number of operations with cryptocurrency and, as a result, increased risks, there is an objective need to establish a legal regime and determine the legal status of this phenomenon.

The official definitions of virtual currency were proposed by the International Monetary Fund and the European Central Bank. According to the first, virtual currency is a digital representation of value, issued by private developers and denominated in their own unit of account (IMF, 2016). According to the second: firstly, it is a type of unregulated, digital money, which is issued and usually controlled by its developers, and used and accepted among the members of a specific virtual community (ECB, 2012); secondly, it is a digital representation of value, not issued by a central bank, credit institution or e-money institution, which, in some circumstances, can be used as an alternative to money (ECB, 2015). The European Banking Authority (EBA) defines "virtual currencies" as a digital representation of value that is not issued by a central bank or government authority and is not necessarily tied to fiat currency (legal tender), but is used by individuals or legal entities as a medium of exchange, may be transferred, stored or sold electronically. In addition, in its recent report on cryptoassets (EBA, 2019), the European Banking Authority proposed a broader definition that combines virtual currencies and tokens under the single term "cryptoassets", defining them using three characteristics:

1) depend primarily on cryptography and distributed ledger technology as part of their perceived or inherent value;

2) is neither issued nor guaranteed by a central bank or public authority;

3) can be used as a means of exchange and/or for investment purposes and/or to access a good or service.

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It should be noted that the European Commission expanded the scope of Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EU and 2013/36/EU) on platforms of virtual currencies and providers of online wallets and clearly formulated that virtual currencies should be understood as a digital representation of value that is not issued and not guaranteed by a central bank or a state body, does not have a mandatory link to a legally established currency and does not has the legal status of currency or money, but is accepted by individuals or legal entities as a medium of exchange that can be transferred, stored and sold electronically.

According to the norms of the Directive 2018/843/EU of 05/30/2018, virtual currencies should not be confused with electronic money within the meaning of the Directive 2009/110/EC of 09/16/2009 or a broader concept of money as part of the expansion of competition in the market of payment services and the harmonization of legislation on the protection of consumer rights and on the rights and obligations of payment service providers and their users, which were introduced as part of the Directive (EU) 2015/2366 of 25/11/2015.

The International Financial Action Task Force on Money Laundering (FATF) in its report Virtual Currencies Key Definitions and Potential AML/CFT Risks (FATF, 2014) emphasized that these

> definition now appears too limited, since math-based, decentralised virtual currencies like Bitcoin are not issued and controlled by a central developer, and some jurisdictions (e.g., the United States, Sweden, and Thailand) now regulate virtual currencies.

The FATF concluded that a virtual currency

> is a digital representation of value that can be digitally traded and functions as a medium of exchange; and/or a unit of account; and/or a store of value, but does not have legal tender status (i.e., when tendered to a creditor, is a valid and legal offer of payment) in any jurisdiction. It is not issued nor guaranteed by any jurisdiction, and fulfils the above functions only by agreement within the community of users of the virtual currency (FATF, 2014).

In EU countries, the generally accepted definition of "virtual currency" is following:

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> a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored and traded electronically.

This definition was presented in the Directive (EU) 2018/843 of 30/05/2018. It must be underlined, that the European Union seeks to provide a legal framework that will not endanger the emergence of the market of virtual currencies and crypto assets, but rather, will promote legal security and growth of enterprises working with virtual currencies and crypto assets. One of the steps to support and ensure an acceptable and effective legal framework is the formation of precise definitions. While the European Union is attempting to legally define "virtual currencies" accorging to the requirements of AML/CFT, there is not yet a strong certainty that this definition will be extended to other areas of activity and law. Currently, the future regulation of virtual currencies is in its infancy, and its legal development and the development of the market for virtual currencies and cryptoassets should be approached with caution.

The European Central Bank uses the term "virtual currency scheme" to denote the mechanism of transactions with virtual currencies and puts them into three categories:

1) closed virtual currency scheme – almost not linked to the real economy (for example, massive multiplayer online games and virtual currencies that can only be used in those games);

2) virtual currency scheme with unidirectional flow – linked to the real economy. Virtual currency can be purchased using fiat money but cannot be exchanged back;

3) virtual currency scheme with bi-directional flow – linked to the real economy. Virtual currency can be purchased using fiat money and exchanged back.

We agree with the position of S.V. Volosovich, according to which

> the third category of virtual currency schemes is able to function with proper regulation. At the same time, it must be distinguished from the previous two through the use of appropriate measures of influence on its participants (Volosovich, 2016).

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The interests of the subjects that participate in the functioning of virtual currency schemes should be taken into account when developing a legal framework aimed at regulating the legal regime of virtual currency in Ukraine. The difficulty lies in the fact that given the specifics of virtual currencies, these subjects have not previously been represented in the payment system, which complicates the development and establishment of their rights, duties and responsibilities.

In order to analyze the legal regime of virtual currency in Ukraine, it is necessary to consider the concept and establish the meaning attach by scientists to the definition of "virtual currency (cryptocurrency)". Modern domestic and international studies present various views regarding the essence of "virtual currency". Thereby, according to I. P. Sytnyk and T. Bondarenko,

> cryptocurrency is an electronic currency in which encryption technology is used to regulate, issue units of currency and confirm the transfer of money (Sytnik, 2017).

M.S. Maramygin, E.M. Prokofieva and A.A. Markova

> consider virtual money (cryptocurrency) as digital currency, the emission and accounting of which is based on cryptographic methods. Virtual currency is an asset, the value of which is determined only by supply and demand, and is restrained only by the will of the private owner of the currency (Leonova, 2018);
> electronic means of payment, the accounting of operations with which is decentralized based on pre-established rules (Kuznetsov, 2016);
> digital assets that are recorded in a distributed ledger (like an electronic ledger - "distributed ledger") (Stovpova, 2018);
> a medium of exchange that acts as currency in some environments but does not possess the generally recognized characteristics of a real currency; a type of unregulated digital money that is created and usually controlled by its developers, used and accepted by members of a particular virtual community (Bondarenko, 2015).

In general, all existing approaches to virtual currencies can be reduced to the following, where virtual currency is recognized as: 1) money; 2) monetary surrogate; 3) goods (property, asset); 4) property right and 5) form of payment service.

We view virtual currency and electronic money, as a type of digital currency with one significant difference: it is associated with fiat currencies. In addition, attribution of virtual currency to fiat currencies is not seen as possible today and in the near future, since its "creators" and "holders" are private individuals. Moreover, it functions only by consent within the community of virtual currency users. The state will be able to

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"produce (mine)" cryptocurrency acting only as a private person. Due to the uncertainty in the understanding of the essence of cryptocurrencies, the issues related to the determination of the legal status and, accordingly, the legal regime of virtual currencies, together with the issues related to the possibility of conducting various transactions with them are regulated differently in different countries.

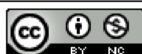
From the point of regulation, three main legal regimes can be distinguished:

1) regime of legalization (regulation) of virtual currency;
2) regime of decriminalization of virtual currency;
3) regime of criminalization of virtual currency.

An official status of the virtual currency is characteristic of the first regime. The regime of legalization is established in Australia, Argentina, Belarus, Great Britain, Germany, Denmark, Canada, the USA, Saudi Arabia, Singapore, France, Switzerland, Sweden, South Korea, Japan, etc. Despite the absence of specialized legislation, China, the Russian Federation, Thailand, etc. are among the countries where the second regime is widespread (the use of virtual currency is not prohibited). The third legal regime, in which transactions with virtual currency are prohibited at the legislative level, operates in Vietnam, Indonesia, Lebanon, Nepal, Pakistan, etc.

It is important to emphasiz that public relations arising from the use of cryptocurrencies continue to develop and spread in more countries every year. For instance, the legal regime of legalization of virtual currency is already in force in 40 countries of the world. Currently, Ukraine still belongs to the number of countries in which the decriminalization regime operates. Since 2017, draft laws have been submitted to the Verkhovna Rada of Ukraine repeatedly in a bid to legalize virtual currency in the country by regulating legal relations regarding the circulation, storage, possession, use and conduct of operations using cryptocurrencies, as well as defining the general principles of functioning and legal regulation of the cryptocurrency market in Ukraine. These draft laws are:

– "On the Circulation of Cryptocurrency in Ukraine" (No. 7183 dated 06/10.2017), submitted for consideration by the People's Deputies of Ukraine I.A. Yefremova, L.L. Denisova, I.P. Rybak et al.;



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– "On Stimulating the Market of Cryptocurrencies and Their Derivatives in Ukraine" (No. 7183-1 dated 10/10/2017), submitted for consideration by the People's Deputy of Ukraine S. V. Rybalka;

– "On amendments to the Tax Code of Ukraine (On Stimulating the Market of Cryptocurrencies and Their Derivatives in Ukraine)" (No. 7246 dated 30/10/2017), submitted for consideration by the People's Deputy of Ukraine S.V. Rybalka;

– "On amendments to the Tax Code of Ukraine on Taxation of Transactions with Virtual Assets in Ukraine" (No. 9083 dated 14/09/2018), submitted for consideration by the People's Deputies of Ukraine O.P. Mushak, O.P. Prodan, O.I. Danchenko et al.;

– "On amendments to the Tax Code of on Taxation of Transactions with Virtual Assets in Ukraine" (No. 9083-1 dated 27/09/2018), submitted for consideration by the People's Deputy of Ukraine Y.B. Derevianko.

Further, all these draft laws were withdrawn after submission to the Verkhovna Rada of Ukraine of the Draft Law on Amendments to the Tax Code of Ukraine and some other Laws of Ukraine on the taxation of operations with crypto assets dated 11/15/2019 No. 2461 (initiated by O.S. Zhmerenetskyi, Y.V. Chernev, M.V. Kryachko, etc.). The Draft Law defines a crypto asset

> as a type of virtual asset in the form of a token, which is created, accounted and alienated in a distributed ledger and does not certify the property and/or non-property rights of the owner of the crypto asset. A virtual asset is a special type of property that is a value in digital form that is created, accounted and alienated of electronically (Verkhovna, 2019).

Despite the fact that the Draft Law does not contain a definition of the term "virtual currency", it is clear from the text that virtual assets are synonymous to the notion "virtual currency (cryptocurrency)". The Draft Law No. 2461 is primarily aimed at receiving a tax by the state, which should be calculated on the positive financial result of transactions with crypto assets. Therefore, this draft law classifies virtual currency as an asset, that is, a set of property owned by an individual or legal entity.

The legal regulation of virtual currency was indirectly affected by the Law of Ukraine "On Preventing and Counteracting to Legalization (Laundering) of the Proceeds from Crime, Financing of Terrorism and Financing of Proliferation of Weapons of Mass Destruction" dated 06/12/2019 No. 361-IX (Verkhovna, 2020). This

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legal act introduced the definition of a "virtual asset" as a digital representation of value that can be digitally traded or transferred and that can be used for payment or investment purposes (p. 13 sec. 1 art. 1).

The Draft Law of Ukraine on Virtual Assets dated 11/06/2020 No. 3637 (initiated by O.S. Zhmerenetskyi, M.R. Poturaiev, I.S. Vasyliev et al.) became the final in a series of draft laws dedicated to the regulation of virtual currencies in Ukraine. As a result of numerous changes and revisions, the fourth edition of this Draft Law was adopted as the Law of Ukraine "On Virtual Assets" dated 17/02/2022 No. 2074-IX. Thereby, the Law pursued and refined the ideas laid down by the Draft Laws No. 9083 and No. 2461. Its adoption finalized the transformation of cryptocurrency/crypto asset into a virtual asset – a new legal form for cryptocurrency/crypto asset, token, token asset, etc., which should be understood as an intangible good that is the object of civil rights, has value and is expressed by a set of data in electronic form (Verkhovna, 2022a). Along with recognition of positive effects of the adoption of the Law of Ukraine "On Virtual Assets", the illogicality of the approach chosen by domestic lawmakers when drafting it should be underlined. Surprisingly, terms that differ in many respects from the European ones are introduced into the legislation, while the term "virtual currency (cryptocurrency)" is excluded from the legislation and replaced with the term "virtual asset". For example, the FATF already uses the term "virtual asset" to define a digital representation of value that can be traded digitally and can be used for payment or investment purposes, including as a medium of exchange, unit of account and/or store of value. We consider this approach wrong, because it violates the commonly known maxima – "entia non sunt multiplicanda praeter necessitatem". It should be noted that a course of the accession of Ukraine to the EU was defined at the state level. Thereby, the national vector of development "a priori" has already determined the path of legal regulation of the virtual currency market in our country. It is necessary to adapt it to the directive legislation of the European Union from the very beginning of the normalization of virtual currency, otherwise, the terminology of the Law of Ukraine "On Virtual Assets" will have to be later brought into line with the European standards.

It must be noted that the Law of Ukraine "On Virtual Assets" dated 17/02/2022 No. 2074-IX must enter into force only from the date of entry into force of the Law of Ukraine "On Amendments to the Tax Code of Ukraine Concerning the Peculiarities of Taxation of Transactions with Virtual Assets", but not before the day of publication of the Law of Ukraine "On Virtual Assets" dated 17/02/2022 No. 2074-IX. Consequently,

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the regime of decriminalization of virtual currency in Ukraine will change to the regime of legalization (regulation) of virtual currency. Currently, the Draft "On Amendments to the Tax Code of Ukraine Concerning the Peculiarities of Taxation of Transactions with Virtual Assets" dated 13/03/2022 No. 7150 (Verkhovna, 2022b) is under review in the specialized committee of the Verkhovna Rada of Ukraine.

Another key point is the current status of virtual currency in Ukraine, considering the Law of Ukraine "On Virtual Assets" dated 17/02/2022 No. 2074-IX has not entered in force yet. To clarify this issue, one should refer to the acts of the National Bank of Ukraine. According to the Clarification on the legality of the use of "virtual currency / cryptocurrency" in Ukraine of the National Bank of Ukraine dated 10/11/2014 "virtual currency/cryptocurrency" Bitcoin is 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, since it contradicts the norms of Ukrainian legislation (National, 2014a). The National Bank of Ukraine confirmed its position on Bitcoin in a letter dated 08/12/2014 No. 29-208/72889 (National, 2014b) identifying it as a monetary surrogate. A similar approach can be extended by legal analogy to other types of virtual currencies, such as: Ethereum, XRP, Tether, Bitcoin Cash, Bitcoin SV, Litecoin, EOS, Binance Coin, Tezos, UNUS SED LEO, etc. Notably, Bitcoin is the main mass virtual currency, the market capitalization of Bitcoin is several times higher than the market capitalization of all other existing cryptocurrencies taken together. Therefore, Bitcoin is not the only cryptocurrency, but it is this type of virtual currency that has gained significant popularity. Consequently, all cryptocurrencies began to be called Bitcoin. This explains the approach of the NBU in 2014 regarding the identification of all virtual currencies with Bitcoin.

According to the classical approach, monetary surrogates do not completely possess any characteristic of money: liquidity is either very low or absent at all, universal recognition and value (stability) are not characteristic of them (but are characterized by limitation and a certain conditionality of their existence), the functions of money are partially performed, and those functions that are performed are often of a somewhat unnatural, distorted, surrogate nature. This distortion causes contradictions between the formal performance of the functions of money and the characteristics of liquidity, universal recognition and stability. For instance, the actual use of monetary surrogates by economic entities for payments means that at least the function of a medium of circulation (exchange) is performed. At the same time, the

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liquidity of monetary surrogates is either absent or very low. Since monetary surrogates are based on a certain monetary scale of prices, the function of the medium of exchange is "joined" by the function of the measure of value. Neverthelesse, the characteristics of stability and universal recognition are not inherent in monetary surrogates. Due to this reason money surrogates do not perform the function of a means of accumulation. Among the functions of money, the function of means of payment comes to the fore, and its "dominance" leads to the "surrogate" nature of other functions. It should be noted that virtual currency, due to the peculiarity of its "life activity", which is carried out in a "digital" environment, has a large liquidity, which directly depends on the volume of virtual currency trading on stock exchanges. This distinguishes it from other monetary surrogates. Referring to the legislative definition of monetary surrogates, they are any documents in the form of currency symbols, are different from the monetary unit of Ukraine, are not issued by the National Bank of Ukraine and are produced for the purpose of making payments in economic circulation, except for currency values (Art. 1 of the Law of Ukraine "On the National Bank of Ukraine" dated 05/20/1999 No. 679-XIV (Verkhovna, 1999)), it can be concluded that virtual currency does not fall under the mentioned definition due to its properties. The domestic definition of "monetary surrogate" at the end of the 20th century is outdated and refers primarily to promissory notes, tax exemptions, part of receivables, rights of claim, some other securities (including government securities that have "defaulted") and so on further, which is indicated by the phrase "document" in the above definition.

Understanding the inexpediency of classifying virtual currency as monetary surrogates, in 2017 the National Bank of Ukraine together with the National Securities and Stock Market Commission and the National Commission for State Regulation of Financial Services Markets issued a Joint Statement of Financial Regulators regarding the status of cryptocurrency in Ukraine dated 30/11/2017, in which it was noted that

> the complex legal nature of cryptocurrencies does not allow to recognize them either as money, or as a currency and means of payment of another country, or as a currency value, or as electronic money, or as securities, or as a monetary surrogate (National, 2017).

After the Joint Statement the letter dated 12/08/2014 No. 29-208/ 72889 was recognized as one which lost its relevance by letter of the National Bank of Ukraine "On recognition of certain letters of the National Bank of Ukraine as having lost

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relevance" dated 03/22/2018 No. 40-0006/16290 (National, 2018) the Clarification of the National Bank of Ukraine dated 10/11/2014 remained relevant. Nonetheless, according to Part 4 of Art. 56 of the Law of Ukraine "On the National Bank of Ukraine", normative legal acts of the National Bank are issued only in the form of resolutions of the Board of the National Bank, as well as instructions, provisions, rules approved by resolutions of the Board of the National Bank. It can be seen that neither letters of the NBU, nor its clarifications can be considered a regulatory act and be used as a legal norm, regardless of whether they are marked as relevant or not.

The approach of tax authorities regarding the determination of the status of virtual currencies is interesting in our scientific search. Thus, according to the Individual Tax Consultation of the Head Department of the State Tax Service of Ukraine in the Kharkiv region No. 5226/10/20-40-14-11-11 dated 09/09/2016 virtual currency is defined as income. The Tax Office noted the following:

> if the operations carried out by the taxpayer are not classified as non-taxable operations, are not exempt from taxation, or are not operations to which the zero rate and 7 percent are applied, then the value added tax at the basic rate is collected according to Art. 194 of the Tax Code of Ukraine. In case of compliance of virtual currencies with the requirements of sub-item 14.1.120, sub-item 14.1.191, items 14.1.244, item 14.1 of Art. 14, s sub-item "a" of item 185.1 of Art. 185 of the Tax Code of Ukraine, transactions for the supply of virtual cryptocurrency E-dinar and other virtual currencies, the place of supply of which is located in the customs territory of Ukraine, in accordance with Art. 186 of the Tax Code of Ukraine are subject to value added tax in accordance with Section V of the Tax Code of Ukraine (State, 2016).

However, the Kharkiv District Administrative Court canceled this individual tax consultation by the decision dated 13/10/2016 No. 820/5120/16 (Kharkiv, 2016) referring to the European Court of Human Rights, namely the case "Skatteverket v David Hedqvist" (C-264/14). The mentioned decision arouses interest as the court considers virtual currency as traditional in terms of taxation. Following such a "legislative interpretation", tax authorities in subsequent consultations (for example, Tax consultation dated 01.25.2019 No. 282/K/99-99-13-01-02-14/IPK (State, 2019)), which considered similar issues, noted that cryptocurrency has an uncertain status in the state and it is impossible to provide tax consultation on the issues of practical application of cryptocurrencies.

Therefore, without a current specific law, virtual currency is characterized by an uncertain legal status, and its use in practice is viewed negatively by state bodies: firstly, the use of cryptocurrencies itself is considered an accompanying element of

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agreements aimed at legalizing (laundering) crime proceeds; secondly, there is no exact answer to the question: do cryptocurrencies operate according to a Ponzi scheme? Does their entire existence ensure the functioning of some financial pyramid? All these issues raise serious concerns about the legal regime of virtual currencies and the security of the system in which they operate, the finality and irreversibility of transactions in a system that is not subject to any supervision, as well as the use of cryptocurrencies in the legalization (laundering) of crime proceeds.

The aspect of illegal use of virtual currency is constantly emphasized by the National Bank of Ukraine and domestic law enforcement agencies in documents that in one way or another relate to the issue of the domestic cryptocurrency market. The public danger of using virtual currency is irrefutably high, as it facilitates the commission of crimes, the concealment of the facts of the financing of crimes, their payment, etc. However, due to the growing interest in virtual currencies, given a negative attitude towards virtual currencies from government bodies, there is a positive attitude from individuals and legal entities all over the world. Counting a negative attitude of the state and state bodies and a positive public attitude, the further legal vacuum will only harm the security of the state, its financial sphere, contribute to the strengthening and use of virtual currency in transactions with a "criminal coloring". Considering the above, it is necessary to accelerate consideration by the specialized committee of the Draft Law of Ukraine On Amendments to the Tax Code of Ukraine on Taxation of Transactions with Virtual Assets No. 7150 dated 13/03/2022 for its faster adoption, conditioning the entrance into force of the Law of Ukraine "On Virtual Assets" dated 02/17/2022 No. 2074-IX.

Virtual currencies today remain an international financial and technological innovation, the result of technical and informational progress, the mechanism of legal regulation of which did not exist until recently, and those mechanisms that already exist in individual states cannot be analyzed in terms of their effectiveness, since very little time has passed since their creation. Modern Ukrainian legislation in the sphere of currency control is currently not capable of regulating relations in the context of mutual transactions using virtual currencies. The experience of other countries and interstate associations in relation to this issue is not demonstrative and contradictory in many respects, and the level of efficiency of mechanisms for legal regulation of virtual currencies, cannot yet be measured.

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> Thus, countries with strong economies and currencies are introducing cryptocurrency as a means of payment or as a financial asset. Countries with weak economies and unstable currencies try to support their national currency by restricting cryptocurrencies as a means of payment but allowing cryptocurrencies as a medium of exchange. To exemplify, in some US states, cryptocurrency is the subject of money transfers in the payment system. In Germany, bitcoins are recognized as a unit of account. In Japan, cryptocurrency is recognized as legal tender. In China, Bitcoin transactions are prohibited for banks, but allowed for individuals. In Canada, Bitcoin is a means of payment. In Spain, the bitcoin system is recognized as an official payment system (Nakonechny, 2017).

However, Ukraine took a wait-and-see position in relation to this issue, like many other states. The main reasons justifying this position are following: the need for a preliminary study of the legal and financial and economic consequences of the use of cryptocurrencies in Ukraine; the expediency of not developing a special law on cryptocurrencies to ensure proper legal regulation of relevant social relations, but making certain general changes to the Law of Ukraine "On Financial Services and State Regulation of Financial Services Markets", "On the National Bank of Ukraine" and some other laws, focusing on specifying the procedure for carrying out activities with cryptocurrencies in the relevant bylaws, etc. Even after the drafting and adoption of the Law of Ukraine "On Virtual Assets" in February 2022, it still remains inactive at the end of the current year.

4 CONCLUSIONS

The conducted research allows us to draw the following inferences:

1. It is established that: virtual currency is different from fiat currency (ie real currency, real money or national currency); virtual currency differs from electronic money, because electronic money is always real currency with the status of legal tender and does not change the unit of account, but stores it in electronic form; virtual currency is a subcategory of digital currency. This circumstance contributes to the use of cryptocurrencies in criminal activities, especially in the legalization (laundering) of proceeds of crime, which complicates the investigation of crimes in which they are involved. The importance of successful countering the illegal use of cryptocurrency prompts the development of special methods of detection and investigation of the legalization (laundering) of proceeds of crime.

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2. It is established that: the uncertainty in the understanding of the essence of cryptocurrencies, the issues related to the determination of the legal status and, accordingly, the legal regime of virtual currencies, together with the issues related to the possibility of conducting various transactions with them are regulated differently in different countries. From the point of regulation, three main legal regimes are distinguished: regime of legalization (regulation) of virtual currency; regime of decriminalization of virtual currency; regime of criminalization of virtual currency. Since Ukraine chose the first of them for itself, the process of making appropriate changes to its legislative framework is ongoing.

3. It is established that: that the development of the legal status of virtual currency should take into account the peculiarities of social relations related to its "life activity". The simplicity of ways to use cryptocurrencies to perform illegal actions should also affect the specifics of their regulation, namely, the control of operations carried out using virtual currencies. The norms that regulate the legal status of virtual currency and the specifics of its circulation in the economy of Ukraine should be established at the legislative level. Significant steps have been taken in this direction (the relevant law was adopted), but the final result has not yet been achieved (the relevant law has not entered into force). Furthermore, the state needs to work out the idea of creating a national centralized virtual currency capable of competing with other virtual currencies used in Ukraine.

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