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LEGAL REGULATION OF CRYPTOCURRENCY RELATIONS WITH IN UKRAINE: EU EXPERIENCE

Abstract. Purpose. The paper aims to study some aspects of the legal regulation of relations with cryptocurrency in Ukraine and the EU and suggest improvements for Ukrainian legislation on virtual assets.

Research methods. To achieve the goal, the following research methods were used: hermeneutic semantic, system-structural, comparative legal, and others. The hermeneutic semantic method was used to study the content of the "cryptocurrency" concept in Ukraine and the EU. The system-structural method was employed to determine areas for improving the Law of Ukraine On Virtual Assets. The comparative legal method was used to raise the question about the possibility of paying tax for owned virtual assets; to present a proposal to introduce taxation of cryptocurrency transactions, drawing attention to the experience of the EU; to submit a proposal to amend the Civil and Commercial Codes of Ukraine following the experience of the EU.

Results. The scientific novelty consists in the study of relations on the legal regulation of relations with cryptocurrency in Ukraine, including transactions involving cryptocurrency, as well as in determining ways to improve the Law of Ukraine On Virtual Assets and developing provisions for the payment of funds to the state budget by the owners of virtual assets. Proposals to the Tax Code, Commercial Code, and Civil Code of Ukraine following the EU experience have been suggested.

Conclusions. It is proposed to make various changes and additions to the Law of Ukraine On Virtual Assets. The question was raised about the possibility of taxing commercial transactions with cryptocurrency and taxing transactions to purchase virtual assets (cryptocurrency units) from owners. A proposal was submitted to the Tax Code of Ukraine on the possibility of applying such taxes to cryptocurrency owners: on profit and capital gains. It is proposed to amend the Commercial Code of Ukraine regarding the possibility of using cryptocurrency by business entities. A proposal was made to develop a database containing data on the acquisition of virtual assets and their use to obtain information on confirmation of ownership and any transactions with cryptocurrency. It is proposed to provide Fiscal Service authorities with access to such a database for taxation of transactions with virtual assets.

Key words: cryptocurrency, Bitcoin, virtual assets, electronic money, Tax Code of Ukraine, Civil Code of Ukraine, Commercial Code of Ukraine.

1. Introduction

In Ukraine, a considerable number of people already own cryptocurrency. The specified currency is convenient for performing various operations on the market. However, the avail-

ability of electronic funds is not yet taxed under the law. Thus, our state loses a significant amount of funds that could have been paid to the budget by the owners of the specified currency.

In wartime, it is essential to fill the budget of Ukraine and conduct activities for business entities to support the economy of our state. The world has been discussing cryptocurrencies for a long time, in particular, regarding its official use as a means of payment. EU states have adopted legislative which allow using cryptocurrency officially. Ukraine, in turn, has also adopted a corresponding legislative act on the legal regulation of cryptocurrency and the possibility of its official use on the territory of our state.

Literature review. Issues of legal support for the circulation of cryptocurrencies are relevant both in the legal science of Ukraine and the EU countries and in Asia and America. We can name some authors who studied these issues: Akiko (Akiko, 2018), Arias-Oliva et al. (Arias-Oliva et al., 2019), Barsan (Barsan, 2019), Carreira et al. (Carreira, Pinto P., Pinto A., 2020), Chiriță and Nica (Chiriță, Nica, 2020), Chornous (Chornous, 2019), Ćirić and Ivanišević (Ćirić, Ivanišević, 2018), Derevianko and Turkot (Derevianko, Turkot, 2018), Derevianko (Derevianko, 2017), Kolková (Kolková, 2018), Kshetri (Kshetri, 2017), Liu et al. (Liu et al., 2021), Miciuła (Miciuła, 2019), Miraz and Ali (Miraz and Ali, 2020), Mykhailovskyi and Kostiuik (Mykhailovskyi, Kostiuik, 2019), Novikov (Novikov, 2017), Solodan (Solodan, 2019), Vinnyk et al. (Vinnyk et al., 2021), (Yaneva, 2021), and others. However, constant changes in theory, practice, and legislation require new research, including in terms of studying and considering the positive aspects in the legislation of EU countries.

Research methods. To achieve the goal, the following research methods were used: hermeneutic semantic, system-structural, comparative legal, and others. The hermeneutic semantic method was used to study the content of the "cryptocurrency" concept in Ukraine and the EU. The system-structural method was employed to determine areas for improving the Law of Ukraine On Virtual Assets. The comparative legal method was used to develop regulation on paying tax for owned virtual assets; to present a proposal to introduce taxation of cryptocurrency transactions, drawing attention to the experience of the EU; to submit a proposal to amend the Civil and Commercial Codes of Ukraine following the experience of the EU.

Purpose. The paper aims to study some aspects of the legal regulation of relations with cryptocurrency in Ukraine and the EU and suggest improvements for Ukrainian legislation on virtual assets.

2. Determining the notion of cryptocurrency in Ukraine and the EU

There is no definition of "cryptocurrency" in the legislation of Ukraine. This term is given

as a generalizing concept, and the term "virtual asset" is used. It is essential that Ukraine has adopted a regulatory document that will regulate legal relations with cryptocurrencies as part of innovative technologies. Otherwise, it could lead to an increase in the size of the "shadow" market (Chornous et al., 2019, p. 5). After this law enters into force, it will be possible to receive tax deductions to the budget from the taxation of transactions with virtual assets.

According to the Law of Ukraine On Virtual Assets, which has not yet entered into force, the term "virtual asset" means an intangible asset that is subject to civil rights, has value, and is expressed in a set of data in electronic form (On virtual assets, 2022).

V.I. Mykhailovskyi and O.V. Kostiuik refer to cryptocurrency by the term "virtual currency" and give it such a characteristic – it is a digital measurement of value. It is a means of payment when performing, in particular, business, and other operations. It is used with the help of computer systems (Mykhailovskyi and Kostiuik, 2019, p. 230).

Mariya Yaneva notes that cryptocurrency is a financial resource developed to pay for various operations using the latest computer technologies (Yaneva, 2021).

Nora Chiriță and Ionuț Nica note that the cryptocurrency appeared due to people's distrust of banking institutions and the inability to return funds in the event of certain situations related to both the activities of banks and the economic situation in the country in particular. The depreciation of the national currency plays a significant role. In this regard, there is a demand for cryptocurrencies in the world. The authors mark that cryptocurrency is a digital asset. In Romania, as in other countries, electronic money is used; in particular, one of its types is Bitcoin (Chiriță, Nica, 2020).

3. Peculiarities of legal regulation of relations with cryptocurrency in Ukraine

On February 17, 2022, the Verkhovna Rada of Ukraine adopted the Law of Ukraine On Virtual Assets (On virtual assets, 2022). This law will come into force with the adoption and publication of a legislative act on the taxation of transactions with virtual assets. Thus, together with the entry into force of this law, it will be necessary to pay taxes on income received from transactions with cryptocurrency. The existing law regulates legal relations that arise with cryptocurrency and considers such types of virtual assets as secured (certifying property rights) and unsecured (not certifying rights). The state authorities that will regulate activities with virtual assets are the following: the National Securities and Stock Market Commission

(unsecured assets) and the National Bank of Ukraine (secured assets). The State Register of service providers related to the turnover of virtual assets will be created, where it will be possible to find information about the relevant service providers. Obtaining permission will be obligatory to provide the services (On virtual assets, 2022).

For proper control over transactions with cryptocurrencies in Ukraine, a database should be developed, indicating data on the purchase of virtual funds and their use. From this database, cryptocurrency owners will be able to obtain information about the confirmation of ownership and any transactions with the specified currency, following the experience of which scientists R. Carreira, P. Pinto, and A. Pinto (Carreira, Pinto P., Pinto A., 2020). The Fiscal Service authorities should access the specified database to tax virtual assets and operations with them. Such experience deserves to be studied and implemented in Ukrainian legislation. We also consider it urgently necessary to define in the Law of Ukraine On Virtual Assets a list of documents that can be used to confirm ownership of cryptocurrencies. We consider it urgently necessary to introduce amendments to the Law of Ukraine On Virtual Assets and additions to the Tax Code of Ukraine regarding the taxation of commercial transactions with cryptocurrency and the taxation of transactions involving the acquisition of virtual assets from owners. Owners of electronic funds must pay taxes for the presence of such assets.

4. Experience in legal support of transactions with cryptocurrencies in the EU

The EU countries regulate transactions with cryptocurrencies in diverse ways. Some countries have adopted a legislative act that regulates transactions with virtual assets, and in others, these legal relations remain unresolved. Many scientists study the relationship between participants in cryptocurrency transactions in different EU countries. In particular, Zoran Ćirić and Stojan Ivanišević investigate such transactions in Malta (Ćirić, Ivanišević, 2018); Ireneusz Miciuła Investigates legal relations related to electronic money in Poland (Miciuła, 2019); Kateryna Solodan investigates relations with cryptocurrency in Eastern Europe (Solodan, 2019); Andrei Novikov determines the specifics of virtual asset turnover in Estonia (Novikov, 2017); Mario Arias-Oliva, Jorge Pelegrin-Borondo, Gustavo Matias-Clavero consider the legal danger of cryptocurrency settlement operations in Spain (Arias-Oliva et al., 2019); Iris M. Barsan studies the legal regulation of relations with electronic money in France (Barsan, 2019); Andrea Kolková

examines legal relations with cryptocurrency in the Czech Republic (Kolková, 2018), etc.

Zoran Ćirić and Stojan Ivanišević consider Maltese legislation to be one of the best for implementing and developing operations with so-called "electronic money" (Ćirić, Ivanišević, 2018, p. 565). Ireneusz Miciuła compares the use of virtual money in different countries and the development of operations with them and considers the use of cryptocurrencies by the Polish economy as a reserve for development (Miciuła, 2019).

R. Carreira, P. Pinto, and A. Pinto provide information that in some European countries, if required to confirm the right to use electronic money when making transactions with it, a document indicating the source of origin and the right to use, own, and dispose of the relevant currency can be provided through the system (Carreira, Pinto P., Pinto A., 2020). Thus, in many EU states, an essential feature of cryptocurrency transactions disappears – anonymity, which is crucial for many participants in such transactions (officials, deputies, senators, public figures, cult workers, etc.) (Derevianko, 2017). Therefore, the advantage of cryptocurrencies over traditional currencies remains only rapid growth in its cost in such countries. However, after the attack of the Russian Federation on Ukraine, the value of cryptocurrencies around the world has rapidly decreased. For the state, a register of cryptocurrency owners, unlike for such owners themselves, is an absolute positive because it is possible to prevent corruption manifestations and control the receipt of money from trading objects withdrawn from civil circulation.

Kateryna Solodan examines the procedure for taxation of income and assets resulting from changes in relations with virtual assets in Europe and notes that there is a difficulty in taxation due to the lack of data on the owners of such assets. One of the essential features of relations related to cryptocurrencies is anonymity. Persons who own, use, and manage electronic funds may be subject to the following taxes: income and capital gains. The scientist points out that tax rates on these assets are among the lowest in some Eastern European countries. Hence, users in these countries are more likely to try to make payments in cryptocurrency instead of payments in European and national currencies (Solodan, 2019). In our opinion, it is necessary to take into account the experience of some European countries and continue research in the area of determining the possibility of making additions to the Tax Code of Ukraine regarding the introduction of income tax on cryptocurrency transactions. We consider it appropriate to establish low tax rates compared to the general ones and develop

proposals to increase criminal liability for tax evasion (mandatory payments). Specialists in criminal law should conduct such studies. Ukraine has no capital gains tax (tax on withdrawn capital) yet. It is unlikely that it should be introduced in the nearest future. The possibility of introducing a new tax into the legal field of Ukraine should be considered by scientists and practitioners based on the experience of some Eastern European countries.

Andrey Novikov notes that the rules for conducting transactions with cryptocurrencies are established at the legislative level in Estonia. This country has adopted legislation according to which it is possible to make transactions and be the owner of electronic money officially. The scientist notes that virtual assets will occupy an increasingly important place in the financial market every year (Novikov, 2017). Mario Arias-Oliva, Jorge Pelegrin-Borondo, and Gustavo Matias-Clavero note that consumers are wary of cryptocurrencies in Spain, given the various risks. However, individuals and companies can use cryptocurrency as a means of payment. In general, virtual assets provide an opportunity to create innovative technologies when performing transactions (Arias-Oliva et al., 2019).

Iris M. Barsan studies the legal regulation of relations mediated by cryptocurrencies in France and notes that with the emergence and spread of electronic money in the world, the country could not stand aside and had to regulate the relations involving operations with virtual assets at the legislative level. In 2019, the relevant law was adopted, which provided for the implementation of registration procedures by intermediaries engaged in such activities and obtaining a license to carry out activities with cryptocurrency (Barsan, 2019). Czech researcher Andrea Kolková points out that the Czech Republic has a legislative act regulating cryptocurrency transactions. Businesses can use electronic currency when performing transactions in general and conducting trading activities in particular (Kolková, 2018). In our opinion, the research of the French and Czech experience requires amendments to the Law of Ukraine On Virtual Assets, the Law of Ukraine On Licensing Economic Activities, and the Commercial and Civil Codes of Ukraine in terms of the possibility of full legitimation of transactions involving cryptocurrency, the introduction of licensing of at least operations with mining, i.e., deduction, mining, generation of units of cryptocurrency, taxation of at least income or profits received from transactions involving cryptocurrency.

5. Conclusions. Shortly, cryptocurrency will become popular and necessary for making

payments and other operations in most countries. Electronic money will likely displace cash from circulation and become, if not the only, then the leading payment system in the world.

The experience of legal support for cryptocurrencies in EU member states varies in terms of liberalism and tax rates. However, the general trend by the example of Malta, France, the Czech Republic, and Estonia indicates the application of preferential taxation compared to the taxation of income from activities in other areas and sectors of the economy and household taxation. In some European countries, information about the owners of cryptocurrency units is entered into computer registers, eliminating anonymity as one of the critical characteristics of cryptocurrency transactions since it is provided to the competent state authorities. It is unlikely that Ukraine needs this experience now. With all the convenience of functioning of such registers for the state, the latter will not technically always be able to obtain and process such information, eliminating its authority. This is without considering the potential refusal of many citizens and enterprises of Ukraine to acquire ownership of cryptocurrency units openly.

Today, it is advisable to amend the Civil Code and Commercial Code of Ukraine as general legal acts regarding the recognition of virtual assets as alternative means of payment since this is defined in the special Law of Ukraine On Virtual Assets. Even more critical will be the development and introduction of amendments to this law and the Tax Code of Ukraine regarding introducing a tax on income received from cryptocurrency transactions. The paper argues for the need to establish low compared to the general tax rates and disrupt the scientific discussion, in particular within the framework of the science of criminal law, regarding the advisability of establishing increased liability for tax evasion from such activities, as well as to start a discussion about the need to introduce in Ukraine capital gains tax (withdrawal tax).

The issue of the need to develop a database that will contain data on the acquisition of virtual funds and their use remains debatable. From this database, cryptocurrency owners will be able to obtain information about the confirmation of ownership and any transactions with cryptocurrency. It will be necessary to provide access to the specified database for the fiscal service to control the taxation of virtual assets and transactions with them.

Analysis of the debatable aspects of the functioning of cryptocurrency transactions, named in the two previous paragraphs, should be devoted to the following scientific research.

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**ПРАВОВЕ РЕГУЛЮВАННЯ ВІДНОСИН ІЗ КРИПТОВАЛЮТОЮ В УКРАЇНІ:
ДОСВІД ЄС**

Анотація. Мета. Метою статті є дослідження окремих елементів правового регулювання відносин із криптовалютою в Україні та ЄС і надання пропозицій до українського законодавства про віртуальні активи.

Методи дослідження. Для досягнення мети було використано такі методи дослідження: герменевтично-семантичний, системно-структурний, порівняльно-правовий та інші. Герменевтично-семантичний метод використано під час дослідження змісту поняття «криптовалюта» в Україні та ЄС. За допомогою системно-структурного методу визначено напрями вдосконалення Закону України «Про віртуальні активи». Використавши порівняльно-правовий метод, було порушено питання стосовно можливості сплати податку за наявність віртуальних активів у власників; подано пропозицію щодо запровадження оподаткування операцій із криптовалютою, звернувши увагу на досвід ЄС; надано пропозицію щодо внесення змін до Цивільного і Господарського кодексів України відповідно до досвіду ЄС.

Результати. Наукова новизна полягає у дослідженні відносин із правового регулювання відносин із криптовалютою в Україні, зокрема й операцій за посередництва криптовалюти, а також у визначенні шляхів вдосконалення Закону України «Про віртуальні активи» та розробленні положень щодо сплати коштів до державного бюджету власниками віртуальних активів. Надано пропозиції до Податкового, Господарського та Цивільного кодексів України відповідно до досвіду ЄС.

Висновки. Запропоновано до Закону України «Про віртуальні активи» внести різні зміни і доповнення. Порушено питання про можливість оподаткування не лише комерційних операцій з криптовалютою, а й оподаткування операцій із купівлі віртуальних активів (одиниць криптовалюти) у власників. Надано пропозицію до Податкового кодексу України щодо можливості застосування до власників криптовалюти таких податків: на прибуток та на приріст капіталу. Запропоновано внести зміни до Господарського кодексу України щодо можливості використовувати криптовалюту суб'єктами господарювання. Надано пропозицію розробити базу, у якій повинні бути вказані дані про набуття віртуальних активів та їх використання для можливості одержання інформації про підтвердження права власності та про здійснення будь-яких операцій із криптовалютою. Запропоновано надати доступ до такої бази органам фіскальної служби для оподаткування операцій із віртуальними активами.

Ключові слова: криптовалюта, біткойн, віртуальні активи, електронні гроші, Податковий кодекс України, Цивільний кодекс України, Господарський кодекс України.

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