

# LEGAL REGULATION OF CRYPTOCURRENCY TURNOVER IN UKRAINE AND THE EU

**Yuliia Chornous, National Academy of Internal Affairs of Ukraine**  
**Serhii Denysenko, Sumy State University**  
**Vasyl Hrudnytskyi, Donetsk National Technical University**  
**Olha Turkot, Lviv State University of Internal Affairs**  
**Oleksandr Sikorskyi, Admiral Makarov National University of Shipbuilding**

## ABSTRACT

*The EU's different approach to the legal status of cryptocurrencies was argued - some countries recognized the expediency of using them and work to create a legal framework that reinforces the legal status of virtual currencies, while other countries reject cryptocurrencies and prohibit their circulation. It was proposed to develop a separate bill, involving the active part of cryptocurrency community, which would contain a provision on defining cryptocurrency as a currency, abandoning the barter nature of cryptocurrency, establishing the National Bank of Ukraine as the main regulator of such relations, refusing to limit the acquisition of cryptocurrency only in specialized financial regulators because of possible corruption risks, establishing a procedure for licensing and conducting AML and KYC procedures, predicting real practical steps for introducing a preferential system of mining taxation with subsequent amendments to tax legislation.*

**Keywords:** Cryptocurrency, Bitcoin, Blockchain, Financial Pyramids, Cryptocurrency Wallet.

## INTRODUCTION

The 21<sup>st</sup> century is a time of technology, the overthrow of economic barriers, unification and globalization. Today, in the conditions of instability of the world economy, changes in public sentiment, distrust of financial institutions, there is a growing interest in autonomous innovative financial systems. We are talking about cryptocurrencies, which were created to exclude an external regulator from the process of electronic payments. For the operation and protection of digital money cryptographic methods are used, while information about the transaction is not encrypted and is always available in clear form.

Since the main purpose of a legal norm is the description of real social relations arising in society, there is an urgent need to create a legal basis for regulating the circulation of cryptocurrency in Ukraine. All the above facts confirm the popularity of cryptocurrency in the world and the presence of stable economic relations that need a legislative regulation.

## REVIEW OF PREVIOUS STUDIES

After analyzing the different views of scientists regarding the legal nature of cryptocurrency, the author proposed to compare the characteristic features of cryptocurrency and currency.

The currency has the following features: specific nature, embodiment of means of exchange, liquidity, divisibility and portability, lack of intrinsic value, attachment to a certain territory, existence of the issuer.

In the course of study, the author formulated the following signs of cryptocurrencies.

Bitcoin is a decentralized system that generates cryptocurrency with a specific financial and legal nature (Drobyazko et al., 2019; Drobyazko, 2019);

Even today, cryptocurrencies can be exchanged for goods and services by agreement of the parties. Some countries of the world officially recognized cryptocurrency as a means of payment (Hilorme et al., 2019);

Cryptocurrency has no signs of the material world. That is why it does not have its own value. Its value is determined by the number of goods and services that can be purchased for a particular amount of cryptocurrency (Hacker & Thomale, 2018).

The distributed blockchain database shows all transactions performed (Chohan, 2017). In such a registry, any user can track the territory where such a transaction took place.

Cryptocurrency, unlike fiduciary money, has no issuer. Coins are generated by a separate group of users called Miners (Prayogo, 2018).

## METHODOLOGY

The methodological basis of the study consists of the provisions of dialectics as a general scientific method of cognizing the phenomena of objective reality, other general scientific and special methods, namely: formal and logical, historical and legal, system analysis, comparative, statistical methods. The use of the historical and legal method contributed to the study of the genesis of scientific research on the development of money and cryptocurrency, the EU and Ukraine legislation regarding the circulation of cryptocurrency. The use of the formal and logical method allowed determining the main directions of the formation of legislation on the legal regulation of the circulation of cryptocurrency in Ukraine. In the course of the analytical review of the financial and legal regulation of the circulation of cryptocurrency of the EU member states and Ukraine, the comparative method was used, which made it possible to propose the main directions of the formation of domestic legislation.

## RESULTS AND DISCUSSIONS

Today, the “*waiting policy*” operates around the world regarding cryptocurrency. No state yet knows exactly what to do with these technologies; no one can fully resolve this issue at the legislative level. Most likely, humanity still does not understand that electronic money is no longer the future, it is a reality.

Let's consider how public relations are regulated in terms of the use of cryptocurrencies on the example of some countries.

The European Union is an association of 28 countries, each of which at the national level has certain features in the legal regulation of both traditional and cryptocurrency businesses. At the same time, the European Union member states have traditionally been considered the most favorable jurisdiction for its jurisdiction. At the moment, none of the regulators of the European Union has adopted special rules for the regulation of cryptocurrency activities.

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

In the Netherlands, the legal status of cryptocurrency as electronic money is standardized.

In Germany in 2013, the Federal Financial Supervisory Authority defined cryptocurrency as “*private funds*” that can be used as payment and replace the traditional currency in civil law contracts (Vandezande, 2017). Thus, the Ministry of Finance decided to recognize the Bitcoin cryptocurrency as an official means of payment. At the same time, for commercial purposes, the activity with these cryptocurrency requires obtaining a special permit (license); such organizations become controlled by the Federal Financial Supervisory Authority.

In Switzerland, according to analysts, the most favorable laws adopted for the circulation of cryptocurrency. The Swiss exchange of cryptocurrency ECUREX GmbH at the present stage is the world's first exchange platform of cryptocurrency for fiduciary currency which fully complies with the regulatory requirements of the Swiss Banking Act (Jackson, 2018). In addition, cryptocurrency transactions in this country were exempt from value added tax-respectively, at the request of Swiss Bitcoin companies to the Swiss Federal Tax Administration, cryptocurrency transactions were recognized in this country as a means of payment, rather than operations to provide services or goods.

The use of cryptocurrency in Croatia is legal, but they are not recognized as electronic money and are not equal to legal means of payment that is, cryptocurrency can be accepted by sellers as a method of payment, however sellers are not obliged to accept them.

Summing up, it should be noted that in different EU countries the approach to the legal status of cryptocurrencies is significantly different - some countries recognized the expediency of using them and work to create a legal framework that reinforces the legal status of virtual currencies, while other countries reject cryptocurrencies and prohibit their circulation.

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

Judicial practice concerning cryptocurrency circulation 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 proceed from the priority of protecting the fundamental rights and freedoms of citizens. It is about the protection of property and the procedure for recovering damages in the event of improper performance of the contract between the parties.

Today, the EU is fighting against money laundering and terrorism. This is manifested in the cryptosphere, in particular, it is planned to introduce new rules that: oblige the bitcoin platforms and the online “*wallets*” of cryptocurrency to identify users; introduce limited use of prepaid cards for calculations; allow investigative bodies to have more access to information.

The tendency to use cryptocurrency exists not only in the international arena, but also in Ukraine. So, Ukraine is in the top 10 countries in the world by the number of Bitcoin users. It is in Ukraine that the largest Bitcoin agency in the CIS countries-the Kuna operates. One of its projects is a cryptocurrency exchange. There are also large development and research companies, for example, Distributed Lab. The use of decentralized technologies is planned and partially already being implemented at the state level: e-Auction 3.0, e-Vox, E-Ukraine (Hilorme et al.,

2019). In addition, the cryptocurrency community is highly developed in Ukraine. At the same time, the legal status of cryptocurrencies and relations that arise as a result of their use has not yet been determined. Despite this, the National Bank of Ukraine (hereinafter - the NBU) is actively exploring the experience of other countries in order to regulate these relations in a European and global context. The question of taxation of cryptocurrency operations remains unresolved. Due to the absence of any special rules, standard taxation rules apply to such transactions.

The only legal act that recalls Bitcoin and determines operations with Bitcoin in Ukraine is the letter of the National Bank of Ukraine dated December 8, 2014 No. 29-208/72889 regarding the assignment of operations with “*virtual currency/Bitcoin cryptocurrency*”, in which the NBU indicated that the issue of virtual currency Bitcoin does not have any security and persons legally obligated to it, not controlled by the state authorities of any country. Thus, Bitcoin is a cash surrogate that does not have real value. Bitcoin buying and selling activities in US dollars or other foreign currency have signs of the functioning of so-called “*financial pyramids*” and may indicate potential involvement in conducting suspicious operations in accordance with the legislation on countering the legalization (laundering) of proceeds from crime (Hilorme et al., 2019).

Regarding the policy of regulation of cryptocurrencies in Ukraine, it can be noted that it is almost absent. The state authorities of Ukraine express an ambiguous position on regulating the cryptocurrency market: they recognize such activity as illegal, and then they prepare projects to develop their own type of cryptocurrency.

The bills pending in the Verkhovna Rada of Ukraine have been left without movement for quite a long time, and new projects are not being prepared. Even local regulations are not being developed that would clarify the position of the state, at least for a certain range of issues in this area. Under such conditions, one could confidently state that Ukraine intends to join the camp of progress and legalize new technologies, abandoning aggressive reactionism and moving to the adoption stage. Thus, on October 6, 2017, the bill № 7183 “*On the circulation of cryptocurrency in Ukraine*” was registered in the Verkhovna Rada of Ukraine.

The bill contains the definition of the main categories: cryptocurrency, miner, mining, blockchain, etc. The question of the regulator is explained, namely, the legislators believe that it should be the National Bank of Ukraine, and not, for example, the National Commission on Securities and Stock Market.

The bill states that the procedure for taxation of operations with mining and cryptocurrency exchange is regulated by the current legislation of Ukraine. This question requires a separate study by experts in the field of tax law in the context of the recognition of cryptocurrency as the property of miner, as well as the circulation of cryptocurrency using an exchange agreement. To do this, we need to get a special explanation of the State Fiscal Services. For example, the US Tax Agency has developed a guide for Bitcoin transaction taxation as transactions with property. The owners of cryptocurrencies believe that they carry out operations completely anonymously. However, today there are a number of technologies that allow you to conduct a search on the social network blockchain and associate a bitcoin address with its real owners.

Ukraine is in a certain “*legal vacuum*” with regard to the legislative regulation of the circulation of cryptocurrency.

## RECOMMENDATIONS

Based on the study, the authors recommended to develop in Ukraine a separate bill, attracting the active part of the cryptocurrency community, which would contain the following provisions: Since cryptocurrency has all the attributes of a currency except for the presence of an issuer, the author proposes to define cryptocurrency as a special type of currency without an issuer, thereby expanding the existing classification of world currencies; to abandon the barter nature of cryptocurrency; to establish the National Bank of Ukraine as the main regulator of relations arising in connection with the circulation of cryptocurrency through the aforementioned financial legal nature; to replace the category “*cryptocurrency basket*” with the generally accepted term “*cryptocurrency wallet*”; to refuse of restriction of the acquisition of cryptocurrency only in specialized financial regulators because of possible corruption risks; to establish a procedure for conducting AML and KYC procedures “*Anti Money Laundering*” and “*Know your customer*” to ensure the transparency of activities of economic entities in the cryptocurrency market and additional guarantees for users to fulfill their obligations; to envisage real practical steps for the implementation of a miner’s preferential tax system for mining followed by amendments to tax legislation; to establish clear requirements for the licensing of economic activities related to the cryptocurrency trade, providing for a moderate cost and the scope of necessary documentation.

## CONCLUSIONS

Ukraine became the first state in the post-Soviet space, which developed a draft law on regulation of cryptocurrency circulation and legal relations in a new industry. It is a matter of respect that the legislator tried to introduce a legislative basis for innovative technology, abandoning the path of prohibition and opposition. In addition, it is advisable to note the readiness of the Ukrainian parliament to consider cryptocurrency as part of civil liberties. The proof of this is the newly developed State Land Cadastre based on the blockchain technology, which was recently introduced by the State Agency for E-Government.

Summing up the above results, it should be noted that today the practice on the chosen topic is still rough. This confirms the existence of stable economic relations not only in Ukraine, but throughout the world. Since economics is primary relative to law, existing social relations require a legislative regulation and the definition of a clear legal nature of cryptocurrency. The state must recognize the existence of cryptocurrency. Such recognition can be expressed in positive regulation at the level of clarifications and the adoption of a separate law to regulate the circulation of cryptocurrency in Ukraine with the involvement of specialists in this field. Otherwise, the number of misunderstandings by the law enforcement agencies of cryptocurrency technologies will increase. In turn, this will lead to the emergence of new negative precedents with them, an increase in the risks associated with their use, which in general will adversely affect the development of this fintech in Ukraine and the legal climate for investment in this promising niche from abroad.

## REFERENCES

- Chohan, U.W. (2017). *Assessing the differences in bitcoin & other cryptocurrency legality across national jurisdictions*.
- Drobyazko, S. (2019). Results of introduction of the improved mechanism of economic security control of insurance companies. *International scientific journal Internauka*, 78(1), 9-11.
- Drobyazko, S., Hryhoruk, I., Pavlova, H., Volchanska, L., & Sergiychuk, S. (2019). Entrepreneurship innovation model for telecommunications enterprises. *Journal of Entrepreneurship Education*, 22(2), 1-7.
- Hacker, P., & Thomale, C. (2018). Crypto-securities regulation: ICOs, token sales and cryptocurrencies under EU financial law. *European Company and Financial Law Review*, 15(4), 645-696.
- Hilorme, T., Perevozova, I., Shpak, L., Mokhnenko, A., & Korovchuk, Y. (2019). Human capital cost accounting in the company management system. *Academy of Accounting and Financial Studies Journal*, 23(SI2), 1-7.
- Hilorme, T., Shurpenkova, R., Kundrya-Vysotska, O., Sarahman, O., & Lyzunova, O. (2019). Model of energy saving forecasting in entrepreneurship. *Journal of Entrepreneurship Education*, 22(SI), 1-6.
- Hilorme, T., Zamazii, O., Judina, O., Korolenko, R., & Melnikova, Y. (2019). Formation of risk mitigating strategies for the implementation of projects of energy saving technologies. *Academy of Strategic Management Journal*, 18(3), 1-6.
- Jackson, O. (2018). *US or Swiss approach for EU crypto regulation?* International Financial Law Review.
- Prayogo, G. (2018). Bitcoin, regulation and the importance of national legal reform. *Asian Journals of Law and Jurisprudence*, 1(1), 1-9.
- Vandezande, N. (2017). Virtual currencies under EU anti-money laundering law. *Computer law & security review*, 33(3), 341-353.

This article was originally published in a Special Issue 2, entitled: "**Business Laws and Legal Rights: Research and Practice**", Edited by **Dr. Svetlana Drobyazko**