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LEGALIZATION OF CRYPTOCURRENCY IN UKRAINE

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The rapid development of information technologies, the globalization of the world economy, and the formation of a digital economy in Ukraine lead to the transformation of socio-economic relations. The growth of digitalization of the economy, the large-scale introduction of information technologies into all spheres of human life contribute to the emergence of new industries, one of which is the crypto industry, with the appearance of which in 2008, the money market totally changed forever. More and more markets are collapsing, while more and more regulators from different countries are busy implementing legislation regarding the legalization, use and taxation of cryptocurrencies. The article is devoted to the study of the peculiarities of cryptocurrency legalization in Ukraine. The peculiarities of the law “Pro virtual’ni aktyvy” and the stages of its implementation are considered. The draft law on amendments to the Tax Code of Ukraine regarding cryptocurrency taxation has been analyzed. The number of cryptocurrency users in Ukraine and other countries of the world, such as the USA, Venezuela, Kenya, North Africa, etc., was studied. The paper analyzes how countries such as Great Britain, the Netherlands, the USA, China, Japan and Canada regulate the cryptocurrency market and whether transactions with them are legalized at the legislative level. Conclusions were also made regarding the feasibility of legalizing cryptocurrency in Ukraine. So far, we have the Law, but for the final settlement of these issues, many different by-laws, instructions and documents still need to be developed. But already today it can be said that the State is dealing with the issue of cryptocurrency relations and is on the way to its settlement.

ЛЕГАЛІЗАЦІЯ КРИПТОВАЛЮТИ В УКРАЇНІ

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віртуальні активи,
оподаткування, легалізація,
ринок криптовалюти

Стрімкий розвиток інформаційних технологій, глобалізація світової економіки, і формування цифрової економіки в Україні зумовлюють трансформацію соціально-економічних відносин. Зростання діджиталізації економіки, масштабне впровадження інформаційних технологій в усі сфери життєдіяльності людини сприяє появі нових галузей, однією з таких є криптоіндустрія, з появою якої в 2008 році грошовий ринок тотально змінився назавжди. Все більше ринків руйнується, водночас дедалі більше регуляторів з різних країн займаються впровадженням законодавства стосовно легалізації, використання та оподаткування криптовалют. Стаття присвячена дослідженню особливостей легалізації криптовалют в Україні. Розглянуто особливості закону «Про віртуальні активи» та етапи його запровадження. Закон також передбачає створення нового центрального органу виконавчої влади на базі Мінцифри для регулювання ринку віртуальних активів. Одна з його функцій – контролювати постачальників послуг, пов’язаних з віртуальними активами, на предмет прозорості структури власності. Також учасники ринку мають запровадити внутрішні процедури фінансового моніторингу для запобігання відмиванню доходів, отриманих злочинним шляхом. Важлива позиція закону – він набуде чинності лише після того, як депутати підготують та проголосують

за відповідні зміни до Податкового кодексу. Проаналізовано законопроект про внесення змін до Податкового кодексу України, щодо оподаткування криптовалюти. Досліджено кількість користувачів криптовалюти в Україні та таких країнах світу, як США, Венесуела, Кенія, Північна Африка і інших. В роботі проаналізовано, як такі країни, як Великобританія, Нідерланди, США, Китай, Японія та Канада регулюють ринок криптовалют та чи легалізовано на законодавчому рівні операції з ними. А також зроблено висновки щодо доцільності легалізації криптовалюти в Україні. Поки що ми маємо Закон, але для остаточного врегулювання віх питань ще потрібно розробити багато різних підзаконних актів, інструкцій та документів. Але вже сьогодні можна сказати, що Держава займається питанням криптовалютних відносин, та знаходиться на шляху до його врегулювання.

Problem statement

The cryptocurrency market in Ukraine is shadowy, due to the lack of legal regulation of transactions with cryptocurrencies. Quite a long time ago, the government of Ukraine considered the possibility of giving cryptocurrency official status, but this actually became possible only in March 2022 after the signing of the Law “Pro virtual’ni aktyvy” by the President of Ukraine. At the moment, it raises quite a lot of questions, so in this work I would like to consider its features and in general the expediency of legalizing cryptocurrency in Ukraine.

Recent research and publications analysis

The works S.O. Hrytsai, V.I. Zakharchenko, N.O. Patachyts and M.S. Nechiporuk, V.B. Marchenko of are devoted to the problems of the essence and development of cryptocurrencies, their types, advantages and disadvantages. But O. Lyubkina, O. Tkachenko and S.F. Cmerichevskyi, O.S. Suzdalev studied the issues of global experience in regulating cryptocurrencies.

Despite numerous studies on the development of cryptocurrencies, the issues of implementation and issues of crypto currency remain insufficiently studied by domestic and foreign scientists, which determines the relevance of scientific research.

The purpose of the article

The purpose of the article is to consider the new law “Pro virtual’ni aktyvy”, which legalizes cryptocurrency in Ukraine, as well as to consider the process of legalization in other countries.

The main material representation

The Ukrainian cryptocurrency market has been actively operating for more than six years, on May 30, 2016, the first Ukrainian cryptocurrency appeared – karbovanets, but all this time it functioned in the shadows. Legal regulation as such did not exist. In 2021, there was the first attempt to adopt a law on the legalization of cryptocurrency.

On September 8, 2021, the Verkhovna Rada adopted the law “Pro virtual’ni aktyvy”, but already on October 5, the President of Ukraine vetoed this law, he opposed the creation of a separate regulator in the virtual assets market. Instead, it is proposed to entrust the relevant functions to the already existing regulator of financial markets. The motive for such a decision is quite convincing: according to the President, the current National Commission for

Securities and the Stock Market of Ukraine will be able to detect various abuses by participants of the new virtual assets market more quickly and accurately.

After the amendments made by the President, on February 17, 2022, the Verkhovna Rada already presented a new version of the law, and on March 16, the law was signed by the President and will enter into force after the adoption of the law on taxation of operations with virtual assets. The legalization of cryptocurrency in Ukraine was planned for October 1, 2022. But it was postponed pending the adoption of the bill.

According to the law “Pro virtual’ni aktyvy”, a definition of “cryptocurrency” was provided, according to the law it is defined as a virtual asset.

A virtual asset is an intangible good that is the object of civil rights, has a value and is expressed by a set of data in electronic form. The existence and liquidity of a virtual asset is ensured by the system of ensuring the turnover of virtual assets. A virtual asset can testify to property rights, in particular, rights of claim to other objects of civil rights [1].

What will change as a result of the adoption of the law?

1. The status of virtual assets will be determined. It will be possible to monitor providers of services related to virtual assets for a transparent ownership structure, and it is also necessary to introduce internal financial monitoring procedures to prevent the laundering of proceeds of crime.

2. The law must protect owners of virtual assets from criminals. Thanks to regulatory changes, it will be possible to reverse malicious cryptocurrency transactions after the fact. For example, if the law enforcement authorities establish that a virtual asset has been stolen, for this the owner of the asset will have to submit a statement and prove the illegality of the executed transaction.

3. Crypto companies will have to pay taxes. Necessary amendments will be made to the Tax Code of Ukraine. Cryptocurrency has great volatility, so it is quite important to determine the tax base, tax payment terms and from what amount it will be calculated. So, for example, in Switzerland, cryptocurrency is equated with foreign currencies – transactions with it are exempt from VAT, but are taxed as property, and in Japan, companies must pay tax on the sale of cryptocurrency, but in Germany, purchases paid for in virtual currency are exempt from taxation.

4. The law legalizes investments in the form of cryptocurrencies.

5. The right of participants in the virtual assets market to independently choose the prices of virtual assets, at

which operations are carried out with them, will lead to an underestimation of the tax liability. The issue of tax declaration of income will be resolved in the next bill on amendments to the Tax Code of Ukraine, the development and adoption of which is possible only after the law of Ukraine “Pro virtual’ni aktyvy”, comes into force. Although the State Tax Service of Ukraine, on the basis of the general provisions of the Tax Code, can prove an understatement of the tax liability, just as with shares or other assets, such as jewelry [2].

Particular attention should be paid to the regulation of taxation of cryptocurrencies. In order to implement the provisions of the law “Pro virtual’ni aktyvy”, and to put it into effect, the Verkhovna Rada of Ukraine registered draft law No. 7150 with amendments to the Tax Code of Ukraine on March 13, 2022. In general, it provides for the introduction of such tax incentives for the application of the “softened regime” of taxation of virtual assets, such as:

- 1) exemption from value added tax of operations with virtual assets and services provided by service providers related to virtual currencies;
- 2) establishment for a period of 5 years of preferential taxation of investment income from transactions with virtual assets for individuals at the rate of tax on the income of individuals in the amount of 5%;
- 3) establishment for a period of 5 years of preferential taxation of investment income from operations with virtual

assets and services provided by providers of services related to virtual assets at an income tax rate of 5%;

- 4) the obligation to pay a military levy on the amount of investment profit from operations with virtual assets for individuals at a rate of 1.5% [3].

As soon as the law “Pro virtual’ni aktyvy”, becomes effective, companies that will provide services for storage, exchange, transfer or management of crypto-assets will be able to attract investments and officially cooperate with the banking system.

This means that companies will work transparently and, as a result, will be able to gain support and protection at an official level.

According to Table 1, we can conclude that in Ukraine, even before the full legalization of cryptocurrency, projects related to the sale and purchase of cryptocurrencies are actively developing. Which is not surprising, because Ukraine is the leader in the number of users of cryptocurrency, 12.73% of the population use cryptocurrency, that is more than 5.5 million residents of Ukraine (see Fig. 1)

Ukraine is one of the first countries in the European Union to legalize cryptocurrency. In general, the European Union itself has not legalized cryptocurrency. At the moment, the law is just being adopted, according to it, the current position of cryptocurrency as an “outsider” will change to a full participant in the space of financial services in the EU, but the exact dates when this will happen are unknown [7].

Table 1 – Ukrainian cryptoprojects

Crypto project	Characteristics of the crypto project
Trust Wallet	It is a decentralized cryptocurrency wallet that allows you to securely trade over 160,000 cryptoassets. With Trust Wallet, users are in full control of their own assets and have access to dApps and decentralized exchanges. The wallet, which Binance has been working with for about four years, is available for installation on iOS and Android mobile devices.
NEAR Protocol	This is software from Ukrainian developers that serves as a platform for creating and running decentralized applications. The main goal of the NEAR Protocol is to provide convenience for developers and users.
DeXe Network	It is a decentralized social trading platform. It is designed to copy the best trading strategies.
Weld Card	The first Ukrainian cryptocurrency payment card. It allows you to safely, instantly and legally use cryptocurrency for daily calculations.

Source: compiled by the author based on [4; 5]

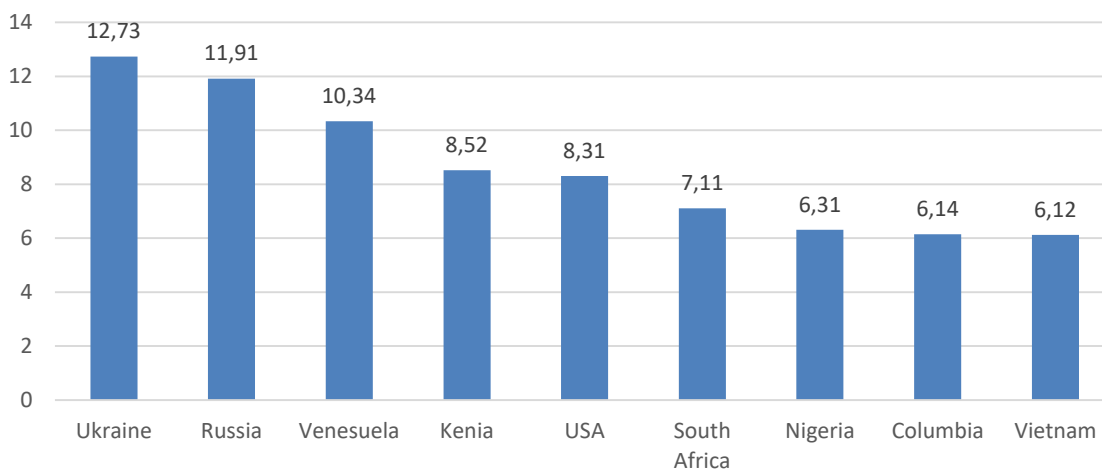


Fig. 1 TOP 10 countries by the number of cryptocurrency users in percentage ratio as of 2020

Source: compiled by the author based on [6]

Great Britain, which recently left the EU, as well as Ukraine, is actively developing a regulatory framework for the legalization of cryptocurrency. On February 24, the Bank of England began developing a regulatory framework for the regulation of cryptoassets. The agency says that while the size of the sector is currently small, its rapid growth could pose a threat to financial stability in the future if left unregulated.

Cryptocurrencies are largely unregulated as they do not fall under the purview of existing UK regulators. In order to create an effective system of supervision over them, the law must first be changed, and the UK Treasury is currently working on this. The CFP plans to apply the principle of equivalence to crypto-assets. It assumes that crypto firms that provide services similar to those of existing financial institutions will be subject to the same regulations [8].

Considering the experience of the Netherlands, it should be noted that at the moment cryptocurrency is not legalized there, although it is owned by half a million Dutch households, investments in cryptocurrency make up 0.1% of their total savings. The Dutch government, in particular the Ministry of Finance, is experimenting with blockchain technology as part of pilot projects dedicated to transferring government processes to smart contracts.

On March 8, 2018, the Dutch Ministry of Finance published a letter on cryptocurrencies. The letter contains a warning about investment risks, as well as an explanation of the need for further consultations with banks regarding the purchase of cryptocurrencies on credit, because USA and UK banks have banned the use of credit cards to purchase cryptocurrencies [9].

In the USA, regulating relations regarding the circulation of cryptocurrencies and determining their legal status is quite complicated. This is due to the fact that, in addition to the legislation of individual states, there are also federal regulations. It is also necessary to take into account the importance of judicial precedent in the USA legal system, since USA courts began to deal with public relations related to the circulation of cryptocurrencies in their cases, even before such relations received regulatory legal regulation at the federal or state level. Therefore, it was the USA courts that first began to give a certain legal definition to cryptocurrencies.

But Canada and Japan are among the countries where cryptocurrency is legalized.

In Japan, the operation of cryptocurrency is regulated at the legislative level. Cryptocurrency exchanges are regulated by the Digital Assets Commission. In case of opening a cryptocurrency exchange, the applicants must form a certain package of documents and follow the rules of activity. Cryptocurrency exchange operators are subject to registration with the Financial Services Agency. Cryptocurrency is a value like an asset. Bitcoin is recognized as a prepaid payment instrument [11].

In Canada, bitcoin is defined as an intangible asset, and transactions with it are defined as barter. From June 1, 2020, cryptocurrency companies were legalized in the country. Now, both foreign and local, they are considered money transfer businesses. For cryptocurrency transactions of more than 10,000 Canadian dollars, the company is required to report the transaction and identify all participants in the transaction. Payment in cryptocurrency for goods and services is taxable as a barter transaction, and at the time of sale [12].

China is the country that reacts most negatively to the legalization of cryptocurrency. In 2013, China banned financial institutions from trading in Bitcoin, while not extending the ban to individuals, and the cryptocurrency market continued to function.

In general, cryptocurrency is considered by the People's Bank of China as a virtual commodity rather than a currency. Taxation of cryptocurrency in this state is as follows: transactions with cryptocurrency are subject to income tax, income tax and capital gains tax, and its sale may be subject to value added tax. In May 2021, the People's Bank of China finally declared cryptocurrencies illegal and ordered an immediate halt to all related activities, as they consider cryptocurrencies a threat to the stability of China's financial market. The only cryptocurrency that can exist in China is the digital yuan [13].

According to Table 3, it can be concluded that out of the seven studied countries, cryptocurrency is legalized in only two countries, the USA is a country where cryptocurrency is partially legalized, while Ukraine and Great Britain are currently at the stage of legalizing cryptocurrency, the Netherlands is not yet ready for legalization, but China quite categorically banned the use of cryptocurrency.

Also, in our opinion, after the legalization of cryptocurrency in Ukraine, it is quite expedient to provide fairly complete information for the population, for the

Table 2 – Features of cryptocurrency recognition in different US states as of 2021

States of the USA	Features
Eastern District of Texas	In 2013, the District Court issued a decision (memorandum opinion) that essentially recognized Bitcoin as a currency.
Miami	The district court in one of its decisions formulated a diametrically opposite position, according to which Bitcoin is not a currency. This conclusion was used as the basis for the dismissal of charges in the case of money laundering.
California	The first of all the states at the legislative level to allow the use of cryptocurrencies. The law, which allows any corporation, association or individual in California to participate in the circulation of money other than US legal tender, went into effect in early 2015.
New York	In 2015, the state's Department of Financial Services introduced the BitLicense, a license to conduct cryptocurrency business. The license was criticized by many major crypto companies, which later left the state.
Washington	Digital currency is an object of money transfers within the meaning of the Law "On the Unification of Financial Services". This means that companies can make cryptocurrency transfers to a Washington resident only after obtaining a Washington money transfer operator license.

Source: compiled by the author based on: [10]

Table 3 – Analysis of countries regarding their perception of cryptocurrency, as of 2022

Country	Is cryptocurrency legalized?	Definition of cryptocurrency
USA	Legalized in some states	Defined as “virtual currency” in some states
Netherlands	Not legalized. Separate cryptocurrency projects are being considered	–
Japan	Legalized	Cryptocurrency is a value compared to assets. Bitcoin is recognized as a prepaid payment instrument
China	Forbidden	–
Canada	Legalized	In Canada, bitcoin is defined as an intangible asset, and transactions with it are defined as barter
UK	Preparations for legalization are underway	–
Ukraine	Preparations for legalization are underway	Cryptocurrency is defined as a virtual asset

Source: compiled by the author based on: [8–13]

correct use of cryptocurrency, it is possible to conduct online courses available to everyone or send information through the “Diya” application.

Conclusions

Summarizing all of the above, we can conclude that Ukraine is currently one step away from the legalization of cryptocurrency. This is a rather complicated and long process that requires a lot of attention. According to the law, which was signed on March 16, owners of cryptocurrencies will be protected from criminals, will be able to independently choose the price of virtual assets, in addition, investments in cryptocurrencies will be legalized and the process of taxation of cryptocurrencies will be determined.

Even before the legalization of cryptocurrencies, companies dealing with cryptocurrencies began to appear in Ukraine, as well as innovative projects, such as a payment cryptocurrency card, which was created for the purpose of making payments in cryptocurrencies, but until the law is valid, this project cannot function either.

Analyzing the foreign experience regarding legalization, it should be noted that each of the studied countries has its own peculiarities regarding the cryptocurrency market, but if we pay attention to the market closest to us, the market of the European Union, then the issue of cryptocurrency legalization is currently being resolved there and in Ukraine. This is quite reasonable, because virtual currency currently fills the market and attracts more and more users, it should not be left in the shadows and allow criminal actions, on the contrary, it is better to bring it out of the shadows and show what advantages and risks can be from using cryptocurrency.

In our opinion, the legalization of cryptocurrency in Ukraine is quite a positive phenomenon. The legalization of cryptocurrencies will create prerequisites for building a civilized and competitive market of virtual assets in Ukraine, which will allow both Ukrainian and foreign investors to enter it. It can also be noted as a positive that, despite different attitudes towards the crypto industry, many countries are engaged in the development of their own national currency on the blockchain platform.

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