

DIGITAL CURRENCY: FEATURES OF REGULATION IN THE RUSSIAN FEDERATION

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The subject of research, relevance. The development of digital technologies has an impact on almost all areas of society, including the financial sphere. This is the reason for a serious controversy to develop recently and to continue both at the international and national levels in terms of approaches to their legal regulation. This discussion affects both public law and private law. The emergence of such a phenomenon as digital currencies raises the question of their legalization for legislators of various states. The answer to such a question cannot be found without studying the legal consequences of making such a decision for both individuals and the financial system of the state.

The purpose. The article puts forward and substantiates a hypothesis that the choice of legal methods for regulating virtual assets is a matter of legal policy, and not just matter of research in the field of defining virtual assets as objects of law or type of property. As a result, when choosing methods of legal regulation of virtual (digital) assets, not only the impact of these legal entities on legal economic turnover (including such issues as the possibility of using excess generated electricity or taxation issues) should be assessed, but also the risk of stimulating illegal "economic" turnover (turnover of things and services in the Darknet, limited turnover of things, for example, drugs), as well as the impact on the financial system.

The methodological basis. Various scientific methods of cognition were used to write the article, including system-structural, formal-logical, comparative-legal and dialectical. The research is based on the principles of interdependence and interconnectedness of social processes.

The main results, scope of application. The article examines the main approaches to the regulation of digital currencies, studies the phenomenon of digital currency itself, assesses the circumstances that aroused massive interest and enthusiasm for cryptocurrencies. An analysis of current positive legal material is presented, in particular, the approach to the regulation of digital currency contained in the Russian Federal Law of July 31, 2020 No. 259-FZ "On digital financial assets, digital currency and on amendments to certain legislative acts of the Russian Federation". The main differences between digital currencies and such a legal phenomenon as digital rights (including utilitarian digital rights and digital financial assets) are noted.

It is noted that in most Russian scientific works in the field of law devoted to digital currencies, attention is paid to the definition of digital currency as an object of civil rights, the foreign experience of attempts of legal regulation of cryptocurrency is considered, emphasis is placed on the positive aspects of the legalization of cryptocurrency for individuals, the risks of legalization of cryptocurrency for individuals, as well as the tasks of regulators in the digital economy are investigated. In addition, some scientific works are devoted to issues related to the digitalization of the economy and digital security. However, little attention is paid to the consequences of the legalization of digital currencies for the monetary system of the state and the potential risks for the stability of monetary systems.

Conclusions. Interest in digital currencies may decrease in following situations. Firstly, if the services provided by payment systems are more efficient, reliable, affordable and cheap for the consumer. Secondly, during the implementation of the central bank digital currency project (in Russian case - the digital ruble), since digital currencies issued by central banks have the advantages of private digital currencies, but are devoid of their disadvantages.

1. Introduction

The regulation of such objects of law as virtual (digital) assets, which is understood as a digital expression of value that can be digitally traded or transferred and can be used for the purpose of payment or investment¹, continues to cause serious controversy at both international and national levels of their legal regulation. This discussion touches on both public law and private law.

The choice of legal methods for regulating virtual assets is a matter of legal policy, and not just research in the field of determining virtual assets as objects of law, referring them to types of property. As a result, when choosing methods of legal regulation of virtual (digital) assets, it is necessary to assess not only the impact of these legal entities on legal economic turnover (including such issues as the possibility of using excess generated electricity or taxation issues²), but also the risk of stimulating illegal "economic" turnover (turnover of things and services in the Darknet, limited turnover of things, for example, drugs), as well as the impact on the financial system.

Due to the increased excitement, the choice of methods for regulating digital currencies, to the analysis of which this article is devoted, is of particular importance.

2. Theoretical aspects of legal regulation of digital currencies

Digital currencies are one of the types of virtual assets, i.e. they are digital expressions of

value. Their value (or consumer value) lies in the fact that they can be used as a means of payment, regardless of the recognition of this circumstance by the state or some international community. Digital currencies differ from non-cash funds, which are liabilities of credit institutions, reflected as entries in bank accounts (deposits) [13, p. 483-492; 14, p. 49], as well as from cash, which are issued banknotes (the issue is currently carried out, as a rule, by the central bank). The similarity of digital currency and non-cash money lies in the non-material form of existence. However, the information environment in which digital currencies are formed and used is fundamentally different. It should also be noted that non-cash funds are officially recognized as a means of payment, while digital currency can either be recognized as an acceptable means of payment or not (depending on the specific state).

Digital currencies can be issued in information systems with a central administrator or without a central administrator (which means that they can be centralized or decentralized); they may or may not be converted to fiat currency (which is typical for digital currencies used in various games). Digital currencies can be private or issued by an issuing center (so-called central bank digital currencies). Currently, the bulk of private digital currencies are issued in information systems based on a distributed ledger, i.e. not involving a central administrator or with an administrator whose role is significantly limited. At the same time, the possibility of the emergence of information systems suitable for digital currencies based on different principles is not excluded. Cryptocurrency as a type of digital currency, which is issued in decentralized information systems, based on the principle of a distributed ledger, and which is protected by using cryptographic methods. Operations with cryptocurrency can be corroborated by special technological methods, which in any case provide a certain level of anonymity for the conditional ownership of the cryptocurrency as well as for the transactions with it.

¹ See: The FATF Virtual Currency Glossary, approved in 2013 and updated in 2018. <http://fedsfm.ru/documents/international-fatf>

² Thus, at a meeting of the Commission on Legal Support of the Digital Economy of the Moscow Branch of the Association of Russian Lawyers, held back in July 2019, the position was expressed that, first of all, it is necessary to "categorize transactions with cryptocurrency as an object of taxation" - see: <https://forklog.com/rossijskie-yuristy-predlozhili-priravnyat-kriptoalyuty-k-imushhestvennym-pravam-i-dat-lgoty-majneram/>

3. Regulation of private digital currency in the Russian Federation

The Federal Law of July 31, 2020 N 259-FZ "On digital financial assets, digital currency and on amendments to certain legislative acts of the Russian Federation"³ adopted in July 2020 has introduced a legal definition of digital currency. It is understood as a set of electronic data (digital code or designation) contained in the information system, which is offered and (or) can be accepted as a means of payment that is not a monetary unit of the Russian Federation, a monetary unit of a foreign state nor an international monetary or unit of account, and (or) as an investment and in respect of which there is no person obliged to each owner of such electronic data, with the exception of the operator and (or) nodes of the information system, only obliged to ensure compliance with the procedure for the release of these electronic data and the implementation of actions in relation to them to make (change) records into such an information system according to its rules (part 3 of article 1).

Earlier, the concept of digital rights was introduced in the Civil Code of the Russian Federation (article 141.1). The Federal Law of August 2, 2019 N 259-FZ "On Attracting Investments Using Investment Platforms and on Amending Certain Legislative Acts of the Russian Federation"⁴, as well as the Law on DFA, defines the types of digital rights: utilitarian digital rights and digital financial assets. A number of scientific works have been devoted to the digital rights [15; pp. 5-10; 16, pp. 33-39; 17, p. 45-48].

The fundamental difference between digital currency, as it is presented in the Law on DFA, and digital rights of various types is the fact that digital law always presupposes an obligated person who issues this right (either in the form of utilitarian digital law or in the form of DFA). Digital currency of this kind does not imply an obligated person ("and in respect of which there

is no person obliged to each owner of such electronic data"): it is something in the form of a code that is offered by the information system itself as a means of payment, without being legally such. Thus, the Law on DFA introduced a de facto definition of a private digital currency. At the same time, the technological neutrality of the definition allows it to be extended to cases of circulation of cryptocurrencies, as well as to circulation of digital currencies issued in information systems built on the principle of a distributed ledger or on other technological principles.

The law on digital currency defines a number of restrictions related to the circulation of digital currency. In particular, it was established that Russian legal entities, branches, representative offices and other separate subdivisions of international organizations and foreign legal entities, companies and other corporate entities with civil legal capacity, created on the territory of the Russian Federation, individuals who in fact stay in the Russian Federation for at least 183 days within 12 consecutive months are not entitled to accept digital currency as a counter grant for goods transferred to or by them, works performed for or by them, services rendered for or by them or any other methods that allow to assume paying by digital currency for goods (works, services) (part 5 of article 14).

It was also determined that judicial protection of claims related to the possession of digital currency would be carried out in case of informing about the facts of possession of digital currency and the performance of civil transactions and (or) operations with digital currency. The way of such protection is established by Russian tax law (Part 6 of Article 14). As a matter of fact, the corresponding amendments to the Tax Code of the Russian Federation were not made simultaneously with the adoption of the Law on DFA; their development is expected by the end of 2020.

At the same time, the issue of regulating the issue and organization of circulation has not been resolved, although the corresponding concepts appeared in the Law on DFA (parts 1-3 of article 14). It is only indicated that the organization of

³ Collection of Legislation of the Russian Federation of August 3, 2020 N 31 (part I), Art. 5018. Hereinafter - the Law on DFA

⁴ Collection of Legislation of the Russian Federation of August 5, 2019 N 31 Art. 4418.

the issue or issue of digital currency, the organization of the circulation of digital currency in the Russian Federation are regulated by federal laws (part 4 of article 14). By and large, during the development of the Law on DFA, it was not possible to develop a general view of the circumstance in which the circulation of private digital currency should be regulated.

4. Legalization of cryptocurrency: pro et contra

Since cryptocurrency is the most actively used type of digital currency, it seems necessary to analyze the arguments "for" and "against" its legalization.

The phenomenon of cryptocurrencies is largely due to the success of Bitcoin, which appeared in 2009 as a real embodiment of distributed ledger technology. The acquisition of exchange value by bitcoin, the property to act as a universal exchange value, depended on several circumstances.

Cryptocurrency proponents talk about lowering costs and increasing level of trust in various business processes that are based on the blockchain technology and are carried out with the participation of cryptocurrencies. "At its core," writes the author of the introduction to the book by P. Vigna and M. Casey J. Schweger, "cryptocurrencies are built on the idea of a universal and secure ledger, open for public use and constantly controlled by high-performance computers that operate independently. In theory, this means that we no longer need banks and other financial intermediaries to guarantee the necessary level of trust between the parties to the transaction. An accounting register formed in a distributed network in most types of cryptocurrencies is called blockchain and serves as a replacement for the previous intermediary. It tells us just as effectively if a prospective transaction partner is reliable enough. By eliminating intermediaries along with their commissions, cryptocurrency allows you to reduce the costs of doing business, and also prevents corruption that existed in intermediary structures and among politicians involved in the orbit of their activities"[18; p. 12].

In other words, the consensus around Bitcoin has developed around the idea of denying banks and, more deeply, the official monetary system and the state behind it.

In addition, it should be noted that from the very beginning of its existence, bitcoin began to be used in operations that the grey market demanded – drugs or arms trade and other goods prohibited or restricted in circulation. As one of the authors of a website dedicated to cryptocurrencies points out, "Bitcoin, and later other cryptocurrencies, have gained incredible popularity not only in the legal sphere, but also in the highly intellectual criminal environment related to the laundering of illegal income, drug trafficking, financing of terrorism, etc."⁵. ... The same site also notes that "black market dealers use BTC in illegal transactions related to trafficking in people, drugs, weapons, precious metals, counterfeit goods"⁶. Due to these factors, FATF is quite tough on the regulation of virtual assets.

In any case, the consumer value was assessed and made it possible to invest significant funds in bitcoin and other types of cryptocurrencies, including, we do not exclude, in the hope of early recognition of cryptocurrencies as existing alongside and in equal rights with "fiat money", i.e. monetary funds issued by the state or community of states. However, the initial "consumer" properties of bitcoin forced many states to treat this "currency" with a certain distrust, which manifested itself in direct prohibitions or restrictions.

So, according to such an analytical center as the US Library of Congress, currently 9 countries in the world completely prohibit and about 17 countries around the world significantly restrict the use of cryptocurrency⁷.

A significant part of the authors consider cryptocurrency as a value that is created outside the control of the state or the central bank. So, I.I.

⁵ <https://forknews.io/security/000194-anonimnost-bitcoin-i-drug.html>

⁶ <https://forknews.io/transactions/006926-amld5-vytesnit-vladelcev.html>

⁷ <https://www.loc.gov/law/help/cryptocurrency/world-survey.php>

KucheroV proposes “to define cryptocurrency as electronic value signs (settlement signs) issued and put into circulation by persons of private law using information technologies, expressed in certain monetary units, which circulate in the form of electronic documents (messages) containing encrypted information about the translation of such signs” [1, p. 142]. A.I. Saveliev points out that “cryptocurrency can be considered as so-called private money⁸ from an economic point of view, but they still have a long way to go to being recognized as money in the legal sense” [2, p. 139]. R. Yankovsky, reflecting on the essence of cryptocurrency, points out that “cryptocurrencies are the easiest to equate with money. This solution seems obvious to the simple, because cryptocurrencies are used as a means of payment; calling them “digital goods” or “things”, we are definitely being mischievous⁹. A.Yu. Tolkachev and M.B. Zhuzhzhakov propose to consider cryptocurrency as “contractual money” [20, p.44] (i.e., cryptocurrency, not being issued as money, can perform the function of money on the basis of a contract). The authors of the textbook “Digital Law” indicate that “cryptocurrency can be used as a means of payment” [21, p. 354].

The presented approach is, at least, an honest approach: its adherents want a certain value to exist in Russia, all over the world, which acted as a global, supranational, supra-governmental means of payment. This is not just an approach of “tech innovators” who care about technological breakthroughs or “qualified investors” who think about new ways of investing. This is the approach of those who make their political and moral choice against such an institution as a nation state in favor of their participation in a supranational project.

Cryptocurrency functions as a sign, a symbol of a payment system that is parallel to the official one and competes with it. In this capacity, it affects the financial stability in the state [22, p.177; 23, p. 13].

The second problem is related to the potential of using cryptocurrency in shadow operations, which, as already noted, was largely the reason for their commercial success. Moreover, they combine the anonymity of cash with the speed of transactions, which is characteristic of non-cash funds. The system for combating money laundering and terrorist financing is built as a system for preventing the use of payment systems for laundering dirty money or financing terrorism. If technology creates opportunities for rapid changes in the channels of transactions, in particular, payment for goods or services, whatever they may be, then this inevitably affects the quality of the AML / CFT system.

Note that cryptocurrencies can negatively affect other public interests, for example, the tax system. As the authors of the anthology “Cryptoanarchy, cyber states and pirate utopias”, ed. P. Ludlow, noted, “the more of our transactions are encrypted, it becomes easier and easier to do business without the supervision of a traditional nation state. As a result, it will be not only about the prosperity of “illegal” commercial transactions (at least, they will become easier to carry out), but also about the fact that it will become increasingly difficult for the state to collect taxes. Indeed, a fully developed shadow economy may appear, which will eventually overtake the legal economy controlled by the state in size and viability” [24, p. 39].

Separately, we draw attention to the fact that decentralized systems, in which cryptocurrencies are created and circulated, call into question such a principle of modern law as the efficiency of legal proceedings.

Finally, there are user risks associated with high volatility in the value of cryptocurrencies.

The works of such authors as A. Lisitsyn [25, pp. 4-17], P.M. Morhat [26, pp. 19-22], A.V. Sazhenov [27, pp. 106-121] E. Efremova [28, pp.42-50], D.A. Pechegin [29, pp. 151-157] and other authors are devoted to certain aspects of cryptocurrencies.

These arguments convince the authors of these lines that in the Russian Federation the possibilities of using cryptocurrency in the

⁸ The concept of private money was analyzed by the famous economist F. Hayek [19]

⁹ Yankovsky R. Why lawyers don't agree on cryptocurrencies // <https://habr.com/ru/post/405199>

circulation of goods, works and services should be significantly limited. Obstacles should be created for cryptocurrency to be accepted instead of legal tender (or as a counter-presentation - if you remain within the concept of "cryptocurrency is property"), which, in fact, is decided by the Law on DFA, as well as in order to legally institutions of exchange functioned - crypto-exchanges, "exchangers" and so on.

In this regard, we support the approach of the legislator, at least not in a hurry to recognize digital currency (in the form as defined by the Law on DFA) as a type of property. Property is a certain good, and a private digital currency, if you will, a simulacrum (as Baudrillard understands it) is good. Not recognizing digital currency as property, the legislator took the path of constructing a legal fiction, indicating that for specially regulated areas (for example, combating corruption, etc.), digital currency can be considered as property.

5. If cryptocurrency is a challenge to the modern financial system, what could be the answer?

The facts of the emergence of cryptocurrency and the growth of interest in it in many countries of the world are, in their own way, formulated criticism of the banking system, as well as both national and international payment systems. An adequate response to the spread of cryptocurrency in this sense can only be a reduction in the cost of transferring funds, ensuring their speed, as well as ensuring the safety of savings, primarily through inflation control mechanisms. In this sense, the emergence of cryptocurrency should force the banking systems to change, and banks should be more careful with their customers.

A second answer to the challenge of cryptocurrencies is the idea of central bank digital currencies. Central banks of a number of countries (for example, the Bank of China, the Bank of England, etc.) are taking steps in this direction. Thus, the Central Bank of the Bahamas launched its own retail two-tier digital currency in October 2020. Sand Dollar has become available to all 393 thousand residents of the

region, who can use it in any trade and service enterprise. Operations with Sand Dollar are carried out from mobile devices through e-wallets¹⁰. In China, the digital yuan is viewed as an alternative to the global presence of the dollar, which could entail significant changes in the entire international financial system¹¹. Issues of issuing digital currency of the central bank are becoming the subject of international research [30].

In October 2020, the Bank of Russia published the Digital Ruble, a public consultation report, which explicitly states that the digital ruble is the same Russian ruble that the Bank of Russia will issue in digital form in addition to existing forms of money. Citizens will be able to transfer digital rubles to their electronic wallets and use them using mobile devices and other media, both online and in the absence of access to the Internet and mobile communications (that is, offline). The digital ruble will supplement monetary circulation and will be used simultaneously with cash rubles and funds of the population and enterprises in accounts with commercial banks. Citizens and enterprises, based on their needs, will be able to freely transfer their money from one form to another - that is, from a digital ruble to cash or to a bank account and vice versa. At the same time, it is necessary to develop special technologies that will make it possible to use the digital ruble in offline mode. The digital ruble will be able to combine the advantages of both cash and non-cash money¹².

According to the Constitution of the Russian Federation (Article 75), the Bank of Russia, as a body that has exclusive rights to issue the Russian ruble, has the right (according to the "spirit" of

¹⁰ Turner Wright. The Bahamas launches world's first CBDC, the 'Sand Dollar' <https://cointelegraph.com/news/the-bahamas-launches-world-s-first-cbdc-the-sand-dollar/>

¹¹ Reuters staff. China needs first mover advantage in digital currency race: PBOC magazine <https://www.reuters.com/article/china-pboc-yuan-digital/refile-china-needs-first-mover-advantage-in-digital-currency-race-pboc-magazine-idUSL3N2G11F>

¹² http://www.cbr.ru/StaticHtml/File/112957/Consultation_Paper_201013.pdf

the Federal Law "On the Central Bank of the Russian Federation (Bank of Russia)" - with sending information about this fact to the State Duma and the Government of the Russian Federation) to introduce the digital ruble as legal tender. Obviously, the issuance and circulation of the digital ruble will require not only the creation of a special system in which it can circulate, but also its "recognition" as a good and, as a consequence, an object of civil law. In addition, the more important recognition is that of citizens.

6. Conclusions

Thus, the choice of the method of legal regulation of the circulation of digital currencies is a matter of legal policy, formed as a result of a balance between different interests and ideas about the ways of social development. The authors of this material have tried to show that the passion for cryptocurrency and, as a result, its positive perception as an object of legal regulation entails poorly controlled risks. We believe that measures that do not stimulate the wide circulation of private digital currency are quite reasonable. At the same time, the best answer to the challenges posed by cryptocurrency to the modern financial market system is not so much a legal ban as the creation of payment systems that correspond to some consumer properties (real or apparent - another question) of cryptocurrencies - cheap and affordable for the consumer, corresponding to the digital economy model. Time, however, will show how the proposed solutions will be able to neutralize the main advantage of a private cryptocurrency - its anonymity.

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