

LEGAL REGULATION OF DIGITAL ASSETS IN THE EUROPEAN UNION AND THE IMPLEMENTATION OF THE ACHIEVEMENTS OF THE EUROPEAN LEGISLATOR IN THE LAW OF THE REPUBLIC OF UZBEKISTAN

Saidbek Sobirov

LLM Student, Tashkent State University of Law

E-mail: hobsboum769@gmail.com

ORCID: 0000-0002-2897-3432

Abstract

In this article, the author attempts a doctrinal study of the issues of legal regulation of the regime of digital assets in the territory of the European Union, in particular their legal status. The normative documents of the European legislator, as well as the opinions of representatives of the modern legal doctrine, are analyzed. On the basis of the comparative analysis, the author puts forward recommendations for the implementation, taking into account national interests, of the rules approved by the European community into the legislation of the Republic of Uzbekistan.

Key words: digital assets, cryptocurrency, digital control, digital property

Introduction

The scientific and technological revolution is bringing changes onto the branches of science and production on a global scale. The development of straight-through technologies, digitalization and other spheres in the era of the fourth industrial revolution make it possible to perform some of the functions performed by a person, artificial intelligence that imitates neural networks and is able to independently perform tasks.

In the current conditions, developments for digital markets, participation of artificial intelligence in commercial turnover are being introduced into various fields

of activity (both in the public and private sectors), in particular in the financial and economic (fiscal) sector, the sphere of public administration in the field of security, education, etc. In our digital age, revenues related to computer technologies and artificial intelligence are becoming more and more popular¹.

“The global nature of the functioning of the digital asset, and in particular, blockchain technologies and cryptocurrencies create the prerequisites for unexplored the problem which is unique in terms of legal regulation. Most cryptocurrencies and other blockchain applications cross international borders, which creates problems related to how and who should regulate them”². For this reason, a number of leading international organizations in the field of finance, technology, etc. and the authorized bodies of certain states, both at the regional and global (intercontinental) levels, attempt to conduct a detailed study and further legal processing of the material obtained for the purpose of forming and publishing (adopting) basic, guiding foundations, principles and rules. Individual countries also seek to do so, often using the recommendations of larger international organizations as a springboard, and sometimes even adopting such recommendations through outright incorporation, which in turn can have both negative and positive effects on existing rulemaking. It is also important to mention that in such a dynamic environment of competition for primacy in the technological environment between the leading economic powers and the transition from the era of political wars to the era of technological confrontations several countries often borrow from each other certain achievements in the analyzed sphere³.

Materials

In the framework of this study, in addition to the comparative analysis method the methods of scientific cognition as the system method, statistical method, methods of generalization, systematization and interpretation of results are also

¹ Рустамбеков И.Р., Гулямов С.С. (2021). Искусственный интеллект – современное требование в развитии общества и государства. – С. 4-5 // <https://gulyamov.org/index.php/said/preprint/view/82>

² Yakubov Akhtam Nusratilloevich. “Smart contracts” in Civil Law Relations and Issues of Its Effective Implementation. Journal of Law Research. 2022, 7 vol., issue 2, P. 48

³ The first technological war in the digital age is considered to be the US attempts to reduce and neutralize the colossal scale of the "intervention" of technological products of the Chinese commercial company Huawei

applied. The issues of legal status of the digital assets (property) and legal control over them in particular, as well as the legal transmission of assets carried out in virtual platforms, were the subject matter of researches held by such representatives of domestic legal science as S.Gulyamov, I.Rustambekov, S.Bazarov, A.Yakubov. In foreign countries the vast researches devoted their works to issues of legal regulation on digital assets including Woodrow Barfield, John O. McGinnis, Fumio Shimpō, Hideki Kanda, John Frank Weaver and others.

Methods

The comparative method is one of the effective methods of cognition of a particular issue. The study of issues of legal regulation of digital assets in foreign law enforcement agencies are prerequisites for the implementation of positive law enforcement experience in the legislative framework of the Republic of Uzbekistan, taking into account national interests.

Results

The results of our doctrinal research allow us to conclude that for digital assets, the concept of control by a person who has any subjective right in relation to any category of digital assets should become an imperative feature. Another result is the possibility of using a digital asset in the activities of an economic entity, as well as when concluding commercial contracts when setting price conditions, their quotes (for example, in a particular cryptocurrency or virtual currency). Specific recommendations are also justified and set out below.

Discussion

As suggested in January 2018, a member of the board of the Central Bank of Germany (Bundesbank), the regulation of cryptocurrencies can only be achieved through international cooperation, given the "clearly limited" resulting impact of the regulatory mechanisms of the governments of individual states in light of the cross-border features of cryptocurrencies.⁴ Regulations relating specifically to blockchain and to the most popular and common types of digital assets such as cryptocurrencies

⁴ Jon Buck, German Central Bank Director: Crypto Regulations Must Be International, Cointelegraph (Jan. 16, 2018), <https://cointelegraph.com/news/german-central-bank-director-crypto-regulations-must-beinternational>.

remain in their infancy or do not exist at all in many European countries, and in many cases European countries, as well as other countries with developed market economies, in particular the United States of America, continue to explore the possibility of regulating these new technologies in accordance with existing rules of rights, also it is ought to be underlined that options for adopting new laws and rules adapted “to meet the challenges of digitalization of law and the financial sector are being considered by these countries”⁵.

Noteworthy that in addition to (and in many cases in conjunction with) the rules and directives of the European Union, a number of European legislators have realized the relevance of digital property, particularly cryptocurrencies and blockchain. Most European countries, at a minimum, have studied how cryptocurrencies, Initial Coin Offerings (ICOs), and blockchain technologies fit into their existing regulatory framework and whether new regulation is needed in these areas. In particular, many European countries have studied and issued recommendations as to whether a particular token or crypto coin is a "security", and how certain transactions with blockchain and cryptocurrency fit in (or do not fit) into existing securities laws and regulations and are therefore subject to or are not subject to existing securities laws and regulations – often with a case-by-case approach.

Directly turning to the comparative study, it is noted that the financial control body of the Great Britain (The United Kingdom Financial Conduct Authority) took a position on the issues of digital assets that neither the financial regulator nor the Bank of England in any way regulate the turnover of cryptocurrency, its emission, etc⁶. In addition to this, it is also argued that this government body does not consider it appropriate to qualify cryptocurrencies as "currencies" (fiat money, legal tender) or "goods" (the object of commercial contracts concluded by counterparties to the transaction).

⁵ Ёкyбoв, А. 2022. The legal nature of crypto-currency and blockchain technology as an object of digital property. *Society and Innovation*. 3, 1/S (Feb. 2022), P.2.

⁶ Cryptocurrency Derivatives, supra note 851; FCA, Distributed ledger technology feedback statement on discussion paper 12 (2017), <https://www.fca.org.uk/publication/feedback/fs17-04.pdf>.

Measures to adopt legal instruments to regulate the issues of ownership (control), alienation of digital assets, virtual currency and other categories of digital property are also being taken by the European community. Thus, one of the steps aimed at regulating social relations arising in connection with and/or regarding cryptocurrency was the adoption of the Directive of the European Union (amending it) "On measures to prevent the use of the monetary and financial system for the purposes of money laundering and terrorist financing"⁷ and the joint directive of the Parliament of the European Union and the Council of Europe No. 2018/843⁸, which by their very nature are also the subject of discussions with aspects of private law. The above documents state that a virtual currency should be qualified as an electronic expression of an economic category of value, which is not issued or guaranteed by the state central bank (or any other fiscal administrative body). The European Parliament proposes, as a recommendation, to consider the following as a feature of virtual currency, in addition to the above:

- does not have any binding link on legal tender (currency) or a common measure of universal value (gold, platinum, etc.);
- from an official regulatory position, as a rule, it is not fixed as a means of payment;
- the established practice among the subjects of turnover that virtual currency is considered as a means of exchange, which can be the object of transfer, storage, etc.

These provisions of the European legislator indicate that the decentralized criterion is currently an obstacle (or is a complex procedure in terms of settlements) for the introduction of virtual currency into commercial circulation both from the

⁷ Directive 2015/849 of 20 May 2015 On The Prevention Of The Use Of The Financial System For The Purposes Of Money Laundering Or Terrorist Financing, amending Regulation (EU) No. 648/2012 of the European Parliament and of the Council // <https://eur-lex.europa.eu/legal-content/en/txt/pdf/?uri=CELEX:32015L0849&from=en>

⁸ Directive 2018/843 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, amending Regulation, and amending Directives 2009/138/EC and 2013/36/EU // <https://eur-lex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:32018L0843&from=en>.

point of view of the means of payment and from the point of view of the object of the digital law of obligations.

In January 2019, the European Securities and Markets Authority (ESMA) published the "Recommendations to the Institutions of the European Union" on initial coin offerings (ICOs) and crypto assets, which explains the existing EU rules applicable to crypto assets that qualify as financial instruments, and sets out the position on gaps and problems in the current global system of financial and legal regulation. As noted, there is currently no legal definition of "crypto-assets" in EU financial securities law. The existing EU financial regulation establishes a comprehensive regime governing transactions in financial instruments. The general trend of this regime (throughout the European Union) is that generally, crypto assets fall outside the scope of EU financial services regulation, and specific services (such as those related to the provision of a crypto asset custodian wallet) and crypto asset trading platforms are not regulated activities under EU financial services legislation⁹. Moreover, different approaches to regulating these activities are emerging across the EU.

One notable doctrinal achievement is that ESMA, through a survey methodology and analysis of statistical data, has classified crypto assets into types according to the criterion of their target orientation¹⁰:

1. crypto-asset characterized as an investment asset (which is also in some cases qualified as a financial instrument in the direct sense of the word) – investment-type crypto-asset;
2. a crypto-payment asset. This type of crypto asset is characterized by the fact that it is "intended for use as a method of payment or exchange for goods or services located outside the DLT system on which they are based"¹¹ – payment-type crypto-asset;

⁹ European Securities and Markets Authority's Advice on Initial Coin Offerings and Crypto-Assets dated January 9, 2019. – C. 18-19 // https://www.esma.europa.eu/sites/default/files/library/esma50-157-1391_crypto_advice.pdf

¹⁰ Kud A., Kucheryavenko N., Smychok E. Digital assets and their economic and legal regulation in the light of technology development blockchain. Monograph.: Kharkiv, "Law": 2019. – P. 217-218

¹¹ Ibid., p. 221

utility-type crypto-asset. The functional content of this type of crypto-asset is to provide an additional function that is not similar to the implementation of means of payment or conversion to fiat money, as well as the exchange for goods or services. In particular, as an example, such a financial result of using this crypto-asset as gaining access to acquisition of certain types of services or things in the civil law sense within the framework of a functioning digital platform / system).

Conclusion

The above analysis states that in order to implement, taking into account national interests, the issues of digital (crypto-currency) turnover in the practice of the Republic of Uzbekistan, it is necessary, first of all, to consider the experiments of such noteworthy achievements of the European legislator as, granting the right to carry out conversion by the so-called financial bureau, as well as the application by analogy of the rule on the prospectus of issue of digital tokens. Also, taking into account national interests, the following ways of reforming the civil law regulation of digital obligations are proposed:

1) The main trend of reform in the era of the fourth industrial revolution should follow not in the direction of creating any radically new, revolutionary institutions of private law, but in improving, reforming, "adapting" today's law to digital realities (primarily by amending regulatory legal acts);

2) It is advisable to build the fundamental principles of the functioning of the digital (virtual, crypto-currency, etc.) turnover on the basis of the online digital register and for the record of digital rights and their rights holders on the basis of modern digital technologies aiming the certification of such rights (the grounds for their emergence, transfer or termination), as well as the identification of digital objects (tokens, cryptocurrencies, etc.) and transactions with them.

LITERATURE

1. Рустамбеков И.Р., Гулямов С.С. (2021). Искусственный интеллект – современное требование в развитии общества и государства. // <https://gulyamov.org/index.php/said/preprint/view/82>
2. Yakubov Akhtam Nusratilloevich. “Smart contracts” in Civil Law Relations and Issues of Its Effective Implementation. Journal of Law Research. 2022, 7 vol., issue 2, 47-55 p.
3. Jon Buck, German Central Bank Director: Crypto Regulations Must Be International, Cointelegraph (Jan. 16, 2018), <https://cointelegraph.com/news/german-central-bank-director-crypto-regulations-must-beinternational>.
4. Ёкубов, А. 2022. The legal nature of crypto-currency and blockchain technology as an object of digital property. Society and Innovation. 3, 1/S (Feb. 2022), 1-12
5. Cryptocurrency Derivatives, supra note 851; FCA, Distributed ledger technology feedback statement on discussion paper 12 (2017), <https://www.fca.org.uk/publication/feedback/fs17-04.pdf>.
6. Directive 2015/849 of 20 May 2015 On The Prevention Of The Use Of The Financial System For The Purposes Of Money Laundering Or Terrorist Financing, amending Regulation (EU) No. 648/2012 of the European Parliament and of the Council // <https://eur-lex.europa.eu/legal-content/en/txt/pdf/?uri=CELEX:32015L0849&from=en>
7. Directive 2018/843 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, amending Regulation, and amending Directives 2009/138/EC and 2013/36/EU // <https://eur-lex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:32018L0843&from=en>.
8. European Securities and Markets Authority’s Advice on Initial Coin Offerings and Crypto-Assets dated January 9, 2019. // https://www.esma.europa.eu/sites/default/files/library/esma50-157-1391_crypto_advice.pdf
9. Kud A., Kucheryavenko N., Smychok E. Digital assets and their economic and legal regulation in the light of technology development blockchain. Monograph.: Kharkiv, "Law": 2019. – 384 p.