

COMPARATIVE ANALYSIS OF LEGAL REGULATION OF BITCOIN IN VARIOUS COUNTRIES

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Abstract. The article is concerned with legal regulation of Bitcoin in various countries of the world. At the present time Bitcoin gains a great popularity, but the authorities in various countries treat that novelty with inequality. What raises doubts is security of the system in question, but Bitcoin is easy to use, reliable, the system is open and not susceptible to counterfeiting of money. The article is based on report of the US Library of Congress Global Legal Research Center. The source base of this research has been formed during the author's study placement in the USA in February of 2014 on the delegation of the Scholar School of Comparative Law Research.

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Technological progress in recent times has led to widespread expansion of the so-called cryptocurrencies («virtual currencies») for purposes of acquisition of certain goods or services. As one such example one can name cryptocurrency Bitcoin.

An analysis of practice of using the said cryptocurrency in various countries is indicative of different approaches of states to issues of legal regulation of use of the said unit: from complete rejection and ban to wide enough use¹. Common, however, is one fact: the said cryptocurrency is used in increasing frequency from year to year, but its use is associated with a considerable set of problems of legal regulation of those attitudes.

Scholars have already entered upon research of virtual currencies. So, for example, in his work «Electronic money and evolution theory of origin of money» A. V. Vlasov keeps track of development of electronic money which has

¹ Regulation of Bitcoin in Selected Jurisdictions // Library of Congress. URL: <http://www.loc.gov/law/help/bitcoin-survey>.

passed several stages: means of access to bank account, money substitutes, game and virtual currencies, cryptocurrencies, and that allowed the author to see in a new light the evolution theory of money as well as the conception of private money developed by the Austrian School¹.

First steps are made in academic research of Bitcoin. So, for example, Doctor of Economics Konstantin Korischenko in his article «What future can be in store for Bitcoin» published on ITAR-TASS official web site, makes an analysis of Bitcoin nature and possibilities of its existence². V. A. Manakhov in the article «Peer-to-peer electronic cash system — Bitcoin» describes the history of its appearance, basic operating principles and significance at the present stage of development of economy. Technical features of the system are displayed. The researcher writes that the network is fully decentralized, doesn't have a central administrator or any of its analogs. The article presents the main merits and advantages of the Bitcoin network — openness, reliability, impossibility of counterfeiting³.

The process of issue and circulation of the most commonly encountered cryptocurrencies is fully decentralized, and possibility is lacking of its regulation, in particular on the part of state. One more key characteristic of use of cryptocurrencies is users anonymity of such cryptocurrencies. Cryptocurrency does not also require maintenance of special reporting documentation.

The above mentioned circumstances, and primarily anonymity of payments, brought about active use of cryptocurrencies in trade in narcotics, weapons, forged documents and other criminal activities. Those facts, as well as the possibility of uncontrolled cross-border transfer of money resources and their further conversion into cash, serve as prerequisites of high risk of potential implication of cryptocurrencies in schemes directed at legalization (laundering) of proceeds of crime, and terrorism financing.

It is important to note that the lack in the cryptocurrencies systems of a supervisory center brings about an impossibility of appeal or cancellation of unauthorized transaction, and an actual location of cryptocurrencies outside the legal environment does not provide possibility of realization of legal mechanics of ensuring performance of obligations by transaction parties. For example, if payment is made, but a service or goods are not received, there are no guarantees of chargeback of such payment. At that, cryptocurrencies by virtue of decentralization do not have a subject ensuring their conventional paying capacity.

Emission of Bitcoins (more truly, mining — according to inner terminology) is decentralized and regulated by software architecture itself, that is by

¹ See: *Vlasov A. V.* Electronic money and evolution theory of origin of money // Science and education: enterprise and economy; entrepreneurship; law and management. 2014. № 12.

² *Korischenko K. N.* What future can be in store for Bitcoin: <http://itar-tass.com/opinions/2142>

³ See: *Manakhov V. A.* Peer-to-peer electronic cash system — Bitcoin // Innovations in science. 2014. № 29.

complicated enough mathematical apparatus. It has been affirmed that the program is secure from fraud, repeated payments. Anonymity of operations is also reckoned among its virtues. One can become owner of virtual monetary unit by way of independent «mining», as well as purchase from those who has already mined, sale of one's own goods and services for Bitcoins.

Bitcoin users (for they are also advanced computer users), have naturally set up a site (coinmap.org), on which it is possible to learn about the novelty everything in details and straight from the source. Bitcoins spread principally in the USA and Europe, where they are approved for payment for goods and services by about a thousand companies and commercial facilities. In Russia, according to reports in the press, Bitcoins are so far accepted by several dozen companies. Among them are snackbars, a number of shops of one of retail networks, as well as several enterprises of real sector of economy.

The attitude of authorities of multiple countries towards new currency is varied. In some countries Bitcoin is adopted as private parallel currency. For example, in Germany it is possible to use it for clearing transactions. Singapore, and after them Norwegian financiers similized trade in Bitcoins to disposal of software and other virtual products and imposed profit from such operations with a tax which is collected in authorized national currency.

On October 9, 2013 Brazil, for instance, adopted a Law № 12,865, which gave a possibility for normalization of mobile payment systems and creation of electronic currencies, including Bitcoin. Apart from everything else, the Law secures arrangements for the use of payment means and payment offices which include Brazilian Payment System (Sistema de Pagamentos Brasileiro, SPB).

But in the leading countries of the world the attitude towards virtual currencies is just the opposite. In China transactions in Bitcoins are forbidden. On December 3, 2013 Central Bank of China and four other ministries of the central government and commissions have jointly issued a Precautionary Notice connected with risks of use of Bitcoins. Defining them as special «virtual goods», the Notice says Bitcoins by their nature are not a currency and should not be distributed and used in the market as a currency.

It is forbidden to banks and payment offices in China to make any transactions in Bitcoins¹. The Notice demands that at this stage financial and payment offices should not use Bitcoins, evaluate in them any products or services to clients, buy or sell Bitcoins or render to clients direct or indirect services connected with Bitcoins, including registration, trade, settlement, clearing or other services; accept Bitcoins or use Bitcoins as a clearing tool; and trade with Bitcoins in Chinese yuan or foreign currencies.

The Notice also demands strengthening of control over Internet websites providing registration, trade in Bitcoins and other services. It also prevented risks related with using Bitcoin system for money laundering.

¹ Regulation of Bitcoin in Selected Jurisdictions // Library of Congress. URL: <http://www.loc.gov/law/help/bitcoin-survey>.

Hostile opinion of that virtual currency was expressed by US authorities who gave reasons for their position by the fact that settlements in anonymous form, when it is impossible to determine either payer or payee are fertile ground for development of illegal operations, among which financing of terrorism is not the last. A number of experts actually set out a lead that Bitcoin is from top to bottom a project of some powerful criminal association.

European Union (EU) has not adopted any definite law with regard to status of Bitcoin as a currency¹. In October 2012 European Central Bank released a report about virtual schemes of currency which touches upon the Bitcoin system and analyzes in a concise way its legal status in accordance with the EU current legislation.

On December 13, 2013 the European Banking Authority (EBA), the EU controlling authority responsible for notification of EU institutions about banking business, regulation of electronic money and payments, issued a warning about dangers connected with such transactions as purchase, storage or trading in virtual currency. The EBA pointed out that, inasmuch as Bitcoin is not regulated by legislation, consumers cannot be protected, and so are in danger of losing their money.

The Bank of Russia rigidly formulated its stance on Bitcoin, having issued a special press release on the problem of transactions in «virtual currencies», including Bitcoin. The document emphasizes that it is characteristic for «virtual currencies» that they lack securities and subjects legally bound by them, dealings in them are of a speculative nature and bear a high risk of depreciation. Note that in this case, in connection with anonymous nature of emission of virtual currencies by unrestricted range of subjects and further uncontrolled nature of their use, the Bank of Russia will in future consider transactions with use of Bitcoins as a potential involvement of their participants in conducting shady transactions in accordance with legislation about countermeasures against legalization (laundering) of proceeds of crime, and financing of terrorism².

The General Procurator's Office of Russia has supported the money market regulator, making it clear that the only legal means of payment in the territory of the country was Russian ruble, and, accordingly, emission of any other instruments and their use were outside the law with all ensuing legal consequences.

In spite of proscription of using Bitcoin in official circulation of a number of countries, it continues to step up presence in virtual space. Prolonged enough period of existence, rates of growth of scope and soaring rate of exchange for principal currencies from practically zero mark to hundreds (in its peak up to a thousand!) dollars for a unit of cryptocurrency give cause to regard that economic novelty not as a curiosity or fortuity. Legal ban remains a legal ban. But it is ob-

¹ Ibid.

² Regulation of Bitcoin in Selected Jurisdictions // Library of Congress. URL: <http://www.loc.gov/law/help/bitcoin-survey>.

vious that the world met with a new economic phenomenon. And that means that it requires understanding and study from exactly that perspective. And not only out of drive for knowledge. It is beyond any doubt that attempts at creating cryptocurrency (for a variety of reasons), especially of an international level, will be taken with regularity of dial-work.

It is obvious that the prospects of Bitcoin are dubious. But equally obvious is another fact — spontaneous search for a supranational currency is going on. Prerequisites for that are clearly present. And, in all appearances, they are solid enough, if a product appeared answering to the challenge of time. But there is a reservation. As long as Bitcoin marches under the banner «Computerniks of all countries, unite», its circulation is limited by comparatively inconsiderable space. Progressively as sphere of circulation widens, new entrants are involved, new contradictions will inevitably appear and become sharp — nobody cancelled national interests. Wouldn't international contradictions be stronger than a drive of computerniks for association? In any case, theory of ultraimperialism discussed in the beginning of the last century was dethroned exactly with practice, irreconcilability of contradictions between countries up to armed conflicts.

Progressively as Bitcoin (or its successor) operating zone widens and deepens, the questions will inevitably come up of emission regulation, emergence in that connection of corresponding bodies and institutions, regulatory enactments and supervisory system. And that is already a battlefield in which there is not always a place for theoretic rationales and pure logic of theoreticians and observers.

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