

Mykhailo O. Shmyhov

State Organization «V. Mamutov Institute of Economic and Legal
Research of the National Academy of Sciences of Ukraine»
Kyiv, Ukraine

LEGAL ASPECTS OF CRYPTO ASSETS REGULATION: FLEXIBILITY VS STANDARDIZATION

Abstract. *The article delves into an in-depth analysis of the current regulations governing crypto assets, both within Ukraine and on an international scale, with a particular focus on the European Union. It identifies a significant regulatory dilemma stemming from the dynamic nature of such a market, which necessitates a strategic decision between implementing specific, rigid rules or adopting a more flexible regulatory approach. Special attention is given to the concept of regulatory neutrality, which emerges as a potential solution amidst rapid technological advancements. The article underscores the potential effectiveness of regulatory neutrality over rigid, prescriptive rules, especially considering the pace of technological evolution within the crypto space. Drawing comparisons between the regulatory frameworks of the European Union and Ukraine, the article highlights their shared approach of permitting the circulation of virtual assets, albeit under the condition of adherence to specific regulatory stipulations. However, a critical examination reveals a potential violation of the principle of technological neutrality within these regulatory frameworks, which may hinder innovation and growth within the sector. Moreover, the article argues against the introduction of new regulatory bodies in the crypto asset sphere, citing existing entities as capable regulators. In addition to regulatory concerns, the article emphasizes the pressing need for further research in key areas such as the classification and taxation of virtual assets. Addressing these aspects is deemed essential for ensuring regulatory compliance, fostering investor confidence, and facilitating sustainable growth within the virtual asset ecosystem. Overall, the article provides a comprehensive exploration of the regulatory challenges and opportunities surrounding virtual assets, offering insights into potential pathways for achieving a balanced, effective regulatory environment conducive to innovation and market stability.*

Keywords: *virtual assets, technological neutrality principle, crypto assets, legal regulation, payment services*

Михайло Олександрович Шмигов

Державна установа «Інститут економіко-правових досліджень
імені В. К. Мамутова Національної академії наук України»
м. Київ, Україна

ПРАВОВІ АСПЕКТИ РЕГУЛЮВАННЯ ОБІГУ КРИПТОАКТИВІВ: ГНУЧКІСТЬ VS СТАНДАРТИЗАЦІЯ

Анотація. *У статті проаналізовано чинне законодавство, що регулює обіг криптоактивів, як в Україні, так і в міжнародному масштабі, з особливим акцентом на Європейський*

Союз. Вона визначає значну регуляторну дилему, що виникає через динамічний характер відповідного ринку, що вимагає стратегічного рішення між упровадженням конкретних, жорстких правил або прийняттям більш гнучкого регуляторного підходу. Особлива увага приділяється концепції регуляторної нейтральності, яка з'являється як потенційне рішення серед стрімкого технологічного прогресу. В статті підкреслюється ефективність регуляторного нейтралітету над жорсткими, директивними правилами, особливо з огляду на темпи технологічного розвитку в криптопросторі. Проводячи порівняння між нормативно-правовими базами Європейського Союзу та України, стаття висвітлює їх спільний підхід щодо дозволу обігу віртуальних активів, хоча й за умови дотримання певних нормативних положень. Однак критичний аналіз виявляє потенційне порушення принципу технологічної нейтральності в рамках цих регуляторних рамок, що може перешкодити інноваціям і зростанню в секторі. Крім того, наголошується на недоцільності запровадження нових регулюючих органів у сфері віртуальних активів, посиляючись на існуючі організації як на спроможних регуляторів. Окрім регуляторних питань, у статті підкреслюється нагальна необхідність подальших досліджень у таких ключових сферах, як класифікація та оподаткування віртуальних активів. Вирішення цих аспектів є важливим для забезпечення відповідності нормативним вимогам, сприяння довірі інвесторів і сприяння сталому зростанню екосистеми віртуальних активів. Загалом стаття спрямована на дослідження регуляторних проблем і можливостей, пов'язаних з криптоактивами, пропонуючи розуміння потенційних шляхів досягнення збалансованого, ефективного регуляторного середовища, сприятливого для інновацій і стабільності ринку.

Ключові слова: *віртуальні активи, принцип технологічної нейтральності, криптоактиви, правове регулювання, платіжні послуги.*

INTRODUCTION

In recent years, the proliferation of virtual assets has profoundly reshaped the global economic landscape, revolutionizing traditional payment systems and introducing unprecedented opportunities for individuals and businesses alike. Ukraine, like many other nations, finds itself amidst this digital transformation, grappling with its far-reaching implications. On one hand, virtual assets offer expedient and cost-effective payment solutions, enhancing accessibility and efficiency for consumers and enterprises. Conversely, this paradigm shift presents a host of new challenges and risks, including cybercrime, money laundering, data privacy concerns, and tax uncertainties, underscoring the imperative for heightened scrutiny and regulation of virtual asset circulation, both domestically and internationally.

These aspects underscore the need for increased attention to the circulation of virtual assets, both in Ukraine and internationally. This necessity is determined by several factors. Firstly, it ensures the stability and reliability of the financial system in the face of rapid technological transformation. Regulation allows for the identification and mitigation of risks associated with virtual assets, ensuring the protection of investors and consumers. Secondly, legal regulation promotes innovation and competition in the payment services market. Clear rules and standards create a favorable environment for

the development of new technologies and financial products, leading to economic growth and increased competitiveness of the country.

Considering this, several countries worldwide, including European Union (EU) countries [1], the United States of America (USA) [2], Switzerland [3], the United Kingdom (UK) [4], Ukraine [5,6], and others, have resorted to developing and adopting legislative acts in this direction. One of the most progressive approaches is undoubtedly that of the European Union. As is known, on June 29, 2023, the long-awaited Regulation on Markets in Crypto-Assets (MiCA) [1] entered into force. However, it cannot be called perfect. In turn, the fragmented nature of legal regulation of virtual asset circulation, and the lack of unity of approaches among countries in this direction, increasingly leads to cases where they are used to achieve goals that contradict public order [7].

Addressing these challenges necessitates a concerted effort to harmonize regulatory approaches at the international level. A unified framework for regulating virtual assets is paramount in ensuring the efficient and transparent functioning of the global payment services market. By fostering collaboration and consensus-building among nations, policymakers can effectively address emerging threats, mitigate risks, and promote sustainable innovation within the digital financial ecosystem. In doing so, they can lay the groundwork for a resilient and inclusive financial landscape that serves the needs of all stakeholders in the digital age.

1. LITERATURE REVIEW

Given the dynamic development of this sphere, interest in researching various aspects of it by members of the scientific community remains unabated. The rapid advancement of technologies and the emergence of new types of virtual assets pose new challenges and tasks for society that need to be addressed. Moreover, they are increasingly being integrated into various financial services programs to facilitate transactions almost in real time, ensure accurate data recording, and enhance payment processes. However, one of the main obstacles to the implementation of these assets is the lack of legal clarity [8]. Therefore, researchers and experts in this field strive to develop effective approaches to the legal regulation of virtual asset circulation and the prevention of the risks they entail. The high-profile collapses of several crypto companies underscore the relevance of this topic [9].

Among Ukrainian studies, particular attention is deservedly given to the scientific works of Dzhabrailov R., Hudima T., Kulik O., Ustymenko V., and others, in which the authors focus on analyzing the influence of European Union legislation on the virtual asset market [10], legal issues surrounding their circulation, particularly in charitable and entrepreneurial activities in Ukraine [11], assessing the legal possibilities of using cryptocurrencies by the Russian Federation to avoid international economic sanctions [7], forming a model of central bank digital currency compatible with national and international legislation [12], and its impact on monetary policy [13; 14], among other topics. Additionally, scholars emphasize the significant importance of digital currencies

for cross-border trade and, consequently, the rationale for countries adopting unified approaches to developing appropriate legal regulation. One effective measure in this direction is the inclusion of this issue in the context of digital agreements, the conclusion of which between countries has become increasingly prevalent recently [15].

Equally intriguing in this research direction are the works of foreign scholars. After the adoption of MiCA by the EU, they mainly focus on assessing this regulatory act [16; 17] and its potential impact on the financial market [18; 19]. A series of studies discuss recent consultations on ESMA Guidelines issued according to Articles 61(1) and 61(3) and Article 2(5) («MiCA» and «Guiding Principles») regarding the concept of reverse solicitation and criteria for classifying crypto-assets as financial instruments. Scholars, employing a pragmatic approach, identify certain gaps in the Guidelines and propose adjustments to their current status, based on the anticipated practical consequences of such interpretation [20].

The rapid proliferation of crypto-assets also prompts an urgent need for the modernization of legislation on anti-money laundering and combating the financing of terrorism [21]. In particular, there is a necessity to adapt existing rules in these areas «to the dynamic and boundless nature of the crypto landscape.» Some scholars emphasize the importance of leveraging advanced technologies, including blockchain analytics and artificial intelligence, to enhance regulatory capabilities for monitoring and tracing crypto transactions [22]. Others propose a new understanding of the issues related to regulating anti-money laundering in crypto-assets, taking into account the limited available information [21].

The issue of compatibility of approaches between different countries, including the EU with the UK [23; 24], the USA, Switzerland [25; 26], and others is of paramount importance in the context of regulating virtual assets.

The article aims to study the current state and prospects of regulating virtual assets in Ukraine and at the international level, particularly within the EU, identifying shortcomings, and forming proposals for their resolution.

2. MATERIALS AND METHODS

To achieve the stated goal of this research and ensure the scientific validity of its results, a comprehensive methodology was employed, incorporating an analysis of the current regulatory landscape governing virtual assets in Ukraine and internationally. Given the complexity and multifaceted nature of the subject under investigation, modern research methods were utilized, including analytical-synthetic, hermeneutic, comparative-legal, and generalization approaches.

For qualitative and doctrinal research purposes, a diverse range of sources were scrutinized, encompassing legal and scientific articles, expert opinions, blog posts, and other relevant materials. Furthermore, an examination of legislative acts, technological advancements, and strategic development plans was conducted to provide a thorough understanding of the regulatory framework and its implications.

The research also delves into the prospective avenues of regulation, considering emerging market trends and anticipated shifts in the legal landscape. Of particular focus is the exploration of optimal strategies for fostering cooperation among governmental bodies across different jurisdictions. This emphasis stems from the recognition of the paramount importance of collaborative efforts in ensuring the stability, security, and sustainable growth of the digital financial sector.

In pursuit of these objectives, the study adopts a forward-looking approach, anticipating and addressing potential challenges and opportunities inherent in the evolving regulatory environment. By synthesizing insights from various sources and employing analytical methodologies, the research endeavors to provide valuable guidance to policymakers, legal professionals, industry stakeholders, and other interested parties navigating the intricate terrain of virtual asset regulation.

Through its methodology and comprehensive analysis, the research seeks to contribute to the ongoing discourse surrounding virtual asset regulation, advancing scholarly understanding and informing practical decision-making processes. By shedding light on key issues and offering actionable recommendations, it aims to facilitate the development of robust, adaptable regulatory frameworks capable of promoting innovation, safeguarding investor interests, and fostering the responsible growth of the digital financial ecosystem.

3. RESULTS AND DISCUSSION

In Ukraine, the process of developing and adopting legal regulation of virtual assets has been underway since 2019. As it is known, at the beginning of 2022, the Verkhovna Rada of Ukraine adopted and the President signed the specialized law «On Virtual Assets». However, it did not come into force, particularly due to the absence of corresponding norms of tax legislation (regarding the taxation of virtual assets), which have not been introduced to this day. Later, considering the development and further adoption of MiCA by the European Union, the expediency of adopting the previous draft law «On Virtual Assets» became obsolete. Ukraine's acquisition of candidate status for EU membership has actualized the need to adapt Ukrainian legislation to European standards. As a result, in November 2023, two draft laws were registered: the first one – Draft Law on Amendments to the Tax Code of Ukraine and other legislative acts of Ukraine regarding the regulation of virtual assets circulation in Ukraine № 10225 dated 07.11.2023 (hereinafter – draft law № 10225) [5], advocated by the National Securities and Stock Market Commission, and the second one registered 10 days later – this is the Draft Law on Amendments to the Tax Code of Ukraine and other legislative acts of Ukraine regarding the regulation of virtual assets circulation in Ukraine № 10225–1 dated 17.11.2023 (hereinafter – draft law № 10225–1) [6], which expresses the position of the Ministry of Digital Transformation. Currently, these two draft laws are under consideration by the Committee of the Verkhovna Rada of Ukraine. In any case, according to the Letter of Intent and the Memorandum

of Economic and Financial Policies between Ukraine and the International Monetary Fund (IMF) dated December 1, 2023, until the end of June 2024, the National Bank of Ukraine and the National Securities and Stock Market Commission are to prepare «updated legislation on virtual assets with technical assistance from the IMF and in consultation with IMF staff to bring it into line with best international practices, taking into account the goals of economic development and mitigating risks to price and financial stability». The creation of a favorable legal environment for entities in such a market, including businesses, becomes of paramount importance in this direction.

Regarding the analysis of the content of the above-mentioned draft laws, attention should be paid to key points that constitute their essence. Thus, draft law № 10225 appears to be more detailed and reflects European approaches to regulating the crypto-assets market to a greater extent. In contrast, draft law № 10225–1, according to experts' positions, takes into account the interests of businesses more, particularly regarding taxation issues. Some of the key differences can be seen more vividly in Table 1.

Table 1. Comparison of Draft Laws on Amendments to the Tax Code of Ukraine and other legislative acts of Ukraine regarding the regulation of virtual asset circulation in Ukraine

	Draft law № 10225 [5]	Draft law № 10225–1 [6]
Regulatory authorities	The National Securities and Stock Market Commission and the National Bank of Ukraine	Ministry of Digital Transformation and the National Bank of Ukraine
Classification of virtual assets	Electronic money tokens, asset-linked tokens, tokens defined by individual characteristics virtual assets that are not asset-linked tokens and electronic money tokens (in particular, service tokens)	Tokens of electronic money, asset-backed tokens, utility tokens, unclassified virtual assets.
Authorisation of virtual assets service providers	Providers offering services related to virtual assets must be authorized. Regardless of their origin – whether they are Ukrainian or foreign providers – a company must undergo authorization to provide such services from the Ukrainian regulator. Subsequently, they should be listed in the corresponding electronic registry.	Not only registered providers within our state's territory but also non-resident companies will be able to offer services to Ukrainian citizens.

	Draft law № 10225 [5]	Draft law № 10225–1 [6]
Taxation	<p>Income of individuals from transactions with virtual assets at a rate of 18% plus 1.5% military levy.</p> <p>Income of legal entities from transactions with virtual assets at a rate of 18%. Cryptocurrency will not be subject to VAT taxation for businesses</p>	<p>The sole tax rate for transactions with virtual assets is 18%, applicable to both corporate income tax and personal income tax.</p> <p>For individuals, the draft law proposes to reduce the tax rate to 5% for the first three years, and then to 9% for the following 5 years. Those eligible for these preferential rates are individuals whose investment income from transactions with virtual assets does not exceed 7 million UAH within one reporting year.</p> <p>Businesses will be exempt from paying VAT for any services related to transactions with virtual assets (excluding service tokens used to tokenize goods and services).</p>

In general, when comparing the mentioned draft laws with the relevant European legislation, one should pay attention to one of the fundamental differences. This concerns the use of different terminology for the same concept, in particular, «crypto-assets» according to the EU approach (Article 3(5) of MiCA) and «virtual assets» according to Ukrainian legislation (in particular, Article 4 of the draft law № 10225). Thus, according to Article 4 of draft law № 10225, a «virtual asset» is defined as a digital thing that can be transferred and stored electronically using distributed ledger technology or similar technology. In turn, according to Article 3(5) of MiCA, «crypto-asset» means a digital representation of value or rights that can be transferred and stored electronically using distributed ledger technology or similar technology. The terms virtual, digital, and crypto-assets overlap. All digital assets are virtual assets, and all crypto assets are digital and virtual assets. However, not all digital assets are crypto-assets, and not all virtual assets are digital assets. For example, an NFT may derive its value from representing ownership rights to a specific asset rather than from using distributed ledger technology. Similarly, virtual assets that do not use this technology are not classified as digital assets [27]. Considering the above, the more acceptable term for Ukrainian legislation would be the term «crypto-assets» since it more accurately reflects the technological nature of such assets, including their connection to distributed ledger technologies and similar ones. It is precisely these technologies that restrict the circulation of crypto-assets/virtual assets in European legislation (MiCA) and, consequently, in Ukrainian draft laws.

Although paragraph 9 of the preamble of MiCA envisages that legislative acts of the European Union on financial services should be guided by the principles of «same activity, same risks, same rules» and «technological neutrality», in other words, technologically neutral regulation will not favor certain products or services over others and will maintain level playing field for competing products and services. Such an approach compels regulatory bodies to be flexible in market selection and allows them to determine which technologies to develop. Experience proves that adhering to such an approach is better than following the preferences of legislators. As is known, regulating specific technologies halts progress. For example, let's consider the situation with bank deposit certificates. These certificates are a tool for attracting funds from bank clients for a specified term at a certain interest rate. In the usual format, when the relevant securities are stored centrally, they are not subject to strict financial regulation as they are standard financial instruments. However, if the same deposit certificates are transferred to the blockchain, they become crypto-assets according to regulator standards. This means that their issuers must comply with all requirements for registration, documentation, and other rules governing the circulation of crypto-assets using distributed ledger technologies or similar ones, both in the EU and in Ukraine (provided that one of the analyzed draft laws is adopted). In other words, as a result of transforming ordinary deposit certificates into blockchain deposit certificates, they automatically fall under strict financial regulation, which can change their nature and the obligations of their issuers.

This hurts the implementation of various financial instruments created based on distributed ledger technology, even if they offer significant advantages compared to their centralized storage. Such broad application of regulation may raise questions about its justification and effectiveness. Not all assets based on distributed ledger technology have the same risks or require the same level of regulation in the context of financial markets. It is especially important to consider this, as the relevant technologies are gradually being introduced into various spheres of economic relations [28; 29].

It should be noted that, unlike other countries where the circulation of cryptocurrencies is strictly prohibited or falls under financial regulatory norms (such as the USA) or operates under favorable regulatory conditions (like Switzerland) [30; 31], the EU has chosen a middle course in this direction. Specifically, it allows for the issuance and distribution of crypto assets but is subject to compliance with special regulatory rules. The goal is to try to bring order to the crypto market through a regime similar to that prevailing in financial markets. This approach may be reasonable, but it is not technologically neutral, as it represents a kind of response to the technological immaturity of a society caught up in «crypto fever». However, such a response may be excessively regulatory. This, in turn, could lead the EU, and consequently Ukraine, to adopt a somewhat technologically conservative stance.

In particular, the trend towards mass investment activity observed recently in cryptocurrency markets may be caused not only by fundamental factors but also by psychological aspects. Investors often buy cryptocurrencies not because of their real value but due to a general fascination with the technology and hope for a quick profit.

However, the question arises as to whether such irrational enthusiasm requires special protection. People buy and sell various assets, such as collectibles, commodities, and so on, without strict regulation. The only exception is when these instruments are used as investment vehicles. This is related to the need for the proper functioning of financial markets for economic stability. The issue is particularly relevant in the case of crypto assets, which are already subject to financial regulation and therefore go beyond the scope of legislation governing the circulation of crypto assets (such as MICA).

Regardless, in the context of technological advancements and their impact on financial markets, it is crucial to strike a balance between protection and fostering innovation, especially in the field of cryptocurrencies and blockchain technologies. Such a balance would ensure an adequate level of protection for investors and users while also fostering the development of new financial instruments and services that meet modern technological requirements.

In this regard, considering the mentioned trends, it is important to focus on regulators who have long been working in this field. The National Securities and Stock Market Commission and the National Bank of Ukraine are already key participants in financial regulation. However, the approach of the EU and representatives of government agencies in Ukraine to the development of relevant legislation has led to a tendency towards creative solutions aimed at introducing new regulators, such as the Ministry of Digital Transformation, into the regulation of virtual assets.

Indeed, one of the main differences in the Ukrainian draft laws is the approach to defining regulatory bodies: the National Securities and Stock Market Commission and the National Bank of Ukraine (draft law № 10225) versus the Ministry of Digital Transformation and the National Bank of Ukraine (draft law № 10225–1). In this case, the «ambitious» approach of the developers of draft law No. 10225–1 regarding the involvement of the ministry as a regulator of the virtual assets market seems rather unusual. According to Article 6 of the Law of Ukraine «On Central Bodies of Executive Power», a ministry is a central executive authority responsible for formulating and implementing state policy in one or more specified areas assigned by the Cabinet of Ministers of Ukraine. In other words, the executive body does not have direct authority over the regulation of financial instruments, including virtual assets. Typically, this falls within the competence of specialized financial regulators such as the National Securities and Stock Market Commission (NSSMC) or the National Bank of Ukraine (NBU). Therefore, when considering regulators of the virtual assets market, attention should be paid to authorities specializing in financial regulation and possessing the necessary experience and expertise in this field (specifically, the NSSMC or the NBU).

Furthermore, in the context of global regulation of cryptocurrencies and blockchain technologies, it is important to ensure cooperation among regulators from different countries and international organizations. This will allow for the creation of unified standards and rules for all market participants, thereby preventing the misuse of new technologies for illegal purposes. It will also ensure stability and trust in the financial system overall.

Alternatively, entities may exploit differences between legal and regulatory systems in different jurisdictions to evade the consequences of illegal financial activities, a practice known as «jurisdictional arbitrage.» Jurisdictional arbitrage is considered one of the most significant risks that cryptocurrencies pose to the implementation and enforcement of sanctions. This is because tracking illegal financial activities and confiscating proceeds from them is nearly impossible if entities use exchanges in jurisdictions where sanction and digital asset regulation programs do not exist, do not adhere to international standards, or are ineffectively implemented. The development and regulation of cryptocurrencies and blockchain technologies are complex tasks that require careful analysis and interaction among all stakeholders [32].

Overall, regulating the cryptocurrency market is indeed a crucial step for every state. However, enacting specialized legislation is not enough. It is necessary to modernize the existing legislative framework and adapt it to the challenges of digitization. Monitoring legislation should be ongoing because this field is evolving rapidly. This can be seen in the example of the European MiCA. It was found to be outdated immediately after its adoption, as new types of services and service providers emerged. This includes decentralized finance, or «DeFi» – financial activities, services, and platforms operated solely by algorithms, without any human intervention [33; 34]. DeFi poses a unique challenge for regulators and supervisory authorities, as it will be difficult for them to identify individuals to whom they can apply their rules and measures. The provisions of MiCA only acknowledge the existence of DeFi but do not regulate it [1, recital 22]. A study for the European Parliament, published in 2023, proposes including DeFi in the next wave of regulation [35]. It should be noted that this is not the only innovation missed by MiCA [36]. In this case, a dubious conclusion suggests itself: no matter what the EU does (and as a result, Ukraine if it implements such experience) in the direction of regulating the circulation of cryptocurrencies, technological development will always be one step ahead. There is only one solution to this dilemma: to abandon regulatory specificity and return to regulatory neutrality. This means ceasing the application of specific regulatory rules or restrictions on certain technologies or services and instead using more universal, neutral approaches to regulation. For example, in the field of cryptocurrencies and blockchain technologies, this may entail applying general principles of financial regulation instead of specific rules defined, for example, in MiCA.

The adoption of such a decision reflects some understanding that technological development is rapidly changing, and specific rules may be ineffective or excessive in the context of such rapid change. Regulatory neutrality is aimed at creating a flexible and adaptive environment where regulatory mechanisms can effectively cope with new challenges and opportunities arising from technological innovations.

CONCLUSIONS

The analysis conducted leads to the following conclusions. The dynamism of the crypto asset market leads to a certain dilemma in regulation. It lies in whether to apply specific

rules to cryptocurrencies or adopt a more flexible approach. Regulatory neutrality recognizes the rapid changes in technology and proposes an adaptive environment where general regulatory principles may be more effective than specific rules. The adoption of such a decision reflects some understanding that technological development is rapidly changing, and specific rules may be ineffective or excessive in the context of such rapid change.

It is argued that compared to other countries, where there are various approaches to the legal regulation of crypto-assets, the European Union has chosen a moderate strategy, allowing their circulation but subject to compliance with special regulatory rules. It is reasoned that such rules and, as a result, Ukrainian draft laws resulting from their implementation, violate the principle of technological neutrality (despite the declaration of this principle in the MiCA). Moreover, in certain cases, such rules become excessively regulatory for the crypto-assets market. This could steer the EU, and consequently Ukraine, towards a somewhat technologically conservative position and slow down innovative development in the respective direction.

The argumentation highlights the inexpediency of involving new regulators in the virtual asset market, particularly the Ministry of Digital Transformation of Ukraine, considering the provisions of Ukrainian legislation «On central bodies of executive power» and the existence of relevant entities (the National Securities and Stock Market Commission and the National Bank of Ukraine), which have long regulated similar areas of financial relations.

The importance of cooperation among regulators from different countries and international organizations in developing a unified regulatory framework for crypto-assets becomes crucial in legislative development. This collaboration will help avoid discrepancies in legal norms and promote stability and trust in the market.

Further research prospects lie in investigating other aspects of crypto-assets circulation, such as classification, taxation, and more.

RECOMMENDATIONS

The article might be interesting for legal professionals, researchers, educators, students, practitioners, and anyone interested in exploring innovative approaches to researching the regulation of crypto assets. It provides valuable insights into the dynamic interplay between regulatory flexibility and standardization, making it pertinent for understanding the evolving landscape of crypto asset governance. Whether readers seek theoretical understanding or practical guidance, this article serves as a valuable resource for navigating the complex challenges associated with regulating crypto assets.

REFERENCES

- [1] Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) № 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (Text with EEA relevance). Retrieved from <https://eur-lex.europa.eu/eli/reg/2023/1114/oj>
- [2] Dewey, J., & Patel, S. (2024). Blockchain & Cryptocurrency Laws and Regulations 2024. *Global legal insights*. Retrieved from <https://www.globallegalinsights.com/practice-areas/blockchain-laws-and-regulations/usa/>

- [3] Kaur, G. (2024). An overview of the cryptocurrency regulations in Switzerland. *Cointelegraph*. Retrieved from <https://cointelegraph.com/learn/an-overview-of-the-cryptocurrency-regulations-in-switzerland>
- [4] Kereibayev, O. (2023). All You Need to Know About UK Crypto Regulations – 2024 Guide. *The Sumsuber*. Retrieved from <https://sumsub.com/blog/all-you-need-to-know-about-uk-crypto-regulations-2023-guide/>
- [5] The Draft Law on Amendments to the Tax Code of Ukraine and Other Legislative Acts of Ukraine Regarding Regulation of Virtual Assets Circulation in Ukraine № 10225 (2023, November). Retrieved from <https://itd.rada.gov.ua/billInfo/Bills/Card/43123>
- [6] The Draft Law on Amendments to the Tax Code of Ukraine and Other Legislative Acts of Ukraine Regarding Regulation of Virtual Assets Circulation in Ukraine № 10225–1 (2023, November). Retrieved from <https://itd.rada.gov.ua/billInfo/Bills/Card/43232>
- [7] Hudima, T., Dzhabrailov, R., & Chernykh, O. (2020). International economic sanctions against the Russian Federation and cryptocurrencies: legal assessment. *Entrepreneurship, Economy, and Law*, 6, 27–36. Retrieved from <https://doi.org/10.32849/2663–5313/2022.6.04>
- [8] Crypto-assets in Dutch perspective. (2020). Opportunities for a Dutch crypto-asset ecosystem. Retrieved from https://www.nvb.nl/media/3560/nvb-crypto-assets_eng.pdf
- [9] Aquilina, M., Frost, J., & Schrimpf, A. (2024). Tackling the risks in crypto: Choosing among bans, containment and regulation. *Journal of the Japanese and International Economies*, 71, 101286. Retrieved from <https://doi.org/10.1016/j.jjie.2023.101286>
- [10] Kulik, O. (2021). Legal Foundations of the European Union’s Impact on the Virtual Assets Market. *Economics and Law*, 1(60), 71–79. Retrieved from <https://doi.org/10.15407/econlaw.2021.01.071>
- [11] Hudima, T., Ustylenko, V., Dzhabrailov, R., & Chernykh, O. (2022). Features of legal regulation of virtual assets in Ukraine: de-facto vs de-jure. *Financial and Credit Activity Problems of Theory and Practice*, 5(46), 137–148.
- [12] Hudima, T., Kamyshanskyi, V., Dmytrenko, T., & Shmyhov, M. (2023). Optimal CBDC design for Ukraine through the lens of privacy and security. *Amazonia Investiga*, 12 (69), 73–83. Retrieved from <https://doi.org/10.34069/AI/2023.69.09.6>
- [13] Hudima, T. S. (2020). *Economic and Legal Support for the Implementation of the State Monetary and Credit Policy on the Principles of Sustainable Development*. Kyiv.
- [14] Hudima, T. (2020). Central Bank Digital Currency: Implementation Features and Impact on Monetary Policy. *Jurnalul juridic national: teorie și practică*, 41(1), 86–89.
- [15] Hudima, T., Trehub, O., & Kamyshanskyi, V. (2023). International digital trade & digital economy agreements: challenges and prospects for Ukraine. *Financial and Credit Activity Problems of Theory and Practice*, 5(52), 449–460. Retrieved from <https://doi.org/10.55643/fcapt.5.52.2023.4139>
- [16] Wronka, C. (2024). Crypto-asset activities and markets in the European Union: issues, challenges and considerations for regulation, supervision and oversight. *J Bank Regul*, 25, 84–93. Retrieved from <https://doi.org/10.1057/s41261-023-00217-8>
- [17] Poulle, J. B., Kannan, A., Spitz, N., Kahn, S., & Sotiropoulou, A. (2024). Markets in Crypto-Assets (MiCA) Regulation. In *EU Banking and Financial Regulation*, 662–669. Retrieved from <https://doi.org/10.4337/9781035301959.00100>
- [18] van der Linden, T., & Shirazi, T. (2023). Markets in crypto-assets regulation: Does it provide legal certainty and increase adoption of crypto-assets? *Financial Innovation*, Chapter 9, 22. Retrieved from <https://doi.org/10.1186/s40854-022-00432-8>

- [19] Teichmann, F. M. J, Boticiu, S. R., & Sergi, B. S. (2024). The EU MiCA Directive – chances and risks from a compliance perspective, 27, 2, 275–283. Retrieved from <https://doi.org/10.1108/JMLC-02-2023-0030>
- [20] Vianelli, A. and Pantaleo, A. (2024). *(Regulatory) History in the Making: The Path to MiCAR*. Retrieved from <http://dx.doi.org/10.2139/ssrn.4714854>
- [21] Renda, A., & Caneppele, S. (2024). Compliant or not compliant? The challenges of anti-money laundering regulations in crypto assets: the case of Switzerland. *Journal of Money Laundering Control*, 27, 2, 363–382. Retrieved from <https://doi.org/10.1108/JMLC-04-2023-0078>
- [22] Paripurna, G. T., Sulistiyono, A., Hartwiningsih, H., & Husein, Y. (2024). Reconstructing Crypto Asset Regulation for Effective Prevention and Eradication of Money Laundering and Terrorist Financing. In *International Conference On Law, Economic & Good Governance*. Atlantis Press, 159–165.
- [23] Sulimierska, M., & Sikorska, A. (2023). The cryptoassets market in the United Kingdom: regulatory and legal challenges. In *The Fintech Disruption: How Financial Innovation Is Transforming the Banking Industry*, 215–242. Retrieved from https://doi.org/10.1007/978-3-031-23069-1_9
- [24] Malala, J., & Adeyemo, F. (2024). Rethinking Crypto-Regulation for Crypto-Investors in the UK. In: Bodellini, M., Gimigliano, G., & Singh, D. (eds) *Commercial Banking in Transition*. Palgrave Macmillan Studies in Banking and Financial Institutions. Palgrave Macmillan, Cham. 2024. Retrieved from https://doi.org/10.1007/978-3-031-45289-5_13
- [25] Lindsay, M. G. (2023). International rise of cryptocurrency: a comparative review of the United States, Mexico, Singapore, and Switzerland’s anti-money laundering (AML) regulation. *South Carolina Journal of International Law and Business*, 19, 2, 8.
- [26] Weber, R. H., & Baisch, R. (2023). Cryptoassets: Taxonomy and Regulatory Approaches. *Banking & Finance Law Review*, 39 (3), 467–505.
- [27] Benke, R. (2023). Digital assets, virtual assets, and crypto assets defined. *Halborn*. Retrieved from <https://www.halborn.com/blog/post/digital-assets-virtual-assets-and-crypto-assets-defined>
- [28] Kamyshanskyi, V. I. (2022). Legal aspects of digitalization of international trade through the introduction of blockchain technology (experience for Ukraine). *Economics and Law*, (4), 31–42. Retrieved from <https://doi.org/10.15407/econlaw.2022.04.031>
- [29] Kamyshanskyi, V., Hudima, T. (2023). Peculiarities of legal regulation of electronic trade documents circulation. *Analytical and Comparative Jurisprudence*, (5), 137–143. Retrieved from <https://doi.org/10.24144/2788–6018.2022.05.25>
- [30] Martino, Edoardo D. (2023). Comparative Cryptocurrencies and Stablecoins Regulation: a Framework for a Functional Comparative Analysis (July 4, 2023). *Amsterdam Law School Research Paper*, 2023–26. Retrieved from <http://dx.doi.org/10.2139/ssrn.4500090>
- [31] Chan, E., & Sioon Yong Tian. (2023). Crypto headwinds: an overview of regulations in Singapore, the EU, the US, and the UK. *Butterworth’s Journal of International Banking and Financial Law*, 410–413.
- [32] Economic Sanction (2023). Agency Efforts Help Mitigate Some of the Risks Posed by Digital Assets. *Report to the Select Committee on Intelligence*, U. S. Senate.

- [33] Schär, F. (2020). *Decentralized Finance: On Blockchain- and Smart Contract-based Financial Markets*. Retrieved from <http://dx.doi.org/10.2139/ssrn.3571335>
- [34] Zetzsche, Dirk A., Arner, Douglas W., & Buckley, Ross P. (2020). Decentralized Finance (DeFi). *Journal of Financial Regulation*, 6, 172–203. Retrieved from <http://dx.doi.org/10.2139/ssrn.3539194>
- [35] Zetzsche, Dirk A., Buckley, Ross P., Arner, Douglas W., & van Ek, Maurits (2023). Remaining Regulatory Challenges in Digital Finance and Crypto-Assets after MiCA. Committee on Economic and Monetary Affairs (ECON), Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg. UNSW Law Research Paper, 23–27. Retrieved from <http://dx.doi.org/10.2139/ssrn.4487516>
- [36] Avgouleas, E., & Seretakis, A. (2023). How Should Crypto Lending Be Regulated Under EU Law? *Eur Bus Org Law Rev*, 24, 421–438. Retrieved from <https://doi.org/10.1007/s40804-023-00293-3>

Mykhailo O. Shmyhov

PhD student

State Organization «V. Mamutov Institute of Economic and Legal Research of the National Academy of Sciences of Ukraine»
01032, 60 Shevchenko Blvd., Kyiv, Ukraine

Михайло Олександрович Шмигов

Здобувач вищої освіти ступеня доктор філософії (081 Право)

Державна установа «Інститут економіко-правових досліджень імені В. К. Мамутова Національної академії наук України»
01032, бульвар Тараса Шевченка, 60, Київ, Україна

Suggested Citation: Shmyhov, M. O. (2024). Legal Aspects of Crypto Assets Regulation: Flexibility vs Standartization. *Journal of the National Academy of Legal Sciences of Ukraine*, 31(3), 241–254.

Рекомендоване цитування: Шмигов М. О. Правові аспекти регулювання криптоактивів: гнучкість vs стандартизація. *Вісник Національної академії правових наук України*. 2024. Том 3. № 31. С. 241–254.

Стаття надійшла / Submitted: 13/06/2024

Доопрацьовано / Revised: 13/07/2024

Схвалено до друку / Accepted: 05/09/2024