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**RIGHTS OF CONSUMERS OF FINANCIAL SERVICES.
CONTROVERSIAL LEGAL REGULATION OF VIRTUAL ASSETS
(CRYPTOASSETS) IN THE LEGISLATION OF THE EUROPEAN
UNION, GREAT BRITAIN AND UKRAINE**

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The Regulation of the European Union of cryptoasset markets [1] (hereinafter the Regulation), proposes the establishment of such legal regulation of cryptoassets, which effectively equates them to financial instruments.

This is important for Ukraine, because this regulation is the basis for the development of changes to the Law of Ukraine "On Virtual assets".

Considering the United Kingdom, on June 19, 2023, received the Financial Services and Markets Bill (FSMB) voted in the first reading – the Law "On Financial Services and Markets", we have the opportunity to implement to Ukrainian legislation the best international legal institutes [2].

At the same time, it is extremely important to introduce consumer rights protection mechanisms into the national legislation of Ukraine. The problem of the level and mechanisms of protection of consumer rights arises from whether to recognize transactions with virtual assets as financial transactions or to recognize part of them as gambling.

Based on a global survey for DRSI (Digital Regulatory and Supervisory Infrastructure) regulation of crypto markets, conducted by the Cambridge Centre for Alternative Finance for the World Bank: "The two most popular functions for which respondents currently operate a DRSI are consumer protection and supervision, respectively 42% and 31%." [3, p. 51].

The problem of choosing a method of legal regulation of cryptoassets in terms of different levels of consumer risks lies precisely in the identification, classification, and separation of different methods of legal regulation for different cryptoassets.

The general classification of virtual assets proposed in the Regulation, and in the proposed amendments to the Law of Ukraine "On Virtual Assets", consists of three types of cryptoassets: electronic money tokens, tokens are linked to assets, other cryptoassets (cryptoassets that are not related to electronic money assets and tokens).

At the same time, the separation of the legal regime of cryptoassets from financial instruments regulated in accordance with Directive 2009/110/EC does not exclude their actual comparison with financial instruments.

In terms of the Regulation, this is evidenced by the staged procedure of issuing cryptoassets and the terminology used in the emission process and combined with requirements similar to credit institutions and electronic money institutions, confirms that the European legal doctrine equates financial instruments and cryptoassets according to the characteristics and method of legal regulation. The relevant direction of regulation is carried to the Law of Ukraine "On Virtual Assets". At the same time, the Preamble of the Regulation establishes that Services for the use of cryptocurrency assets should be considered "financial services" as defined in Directive 2002/65/EC of the European Parliament and of the Council. [4]. Based on the analysis of European legislation and research, it turns out that cryptoassets are the same financial instruments, simply built on distributed ledger technology (blockchain).

British legislators and scientists are debating the issue of applying the legal regime of gambling regulation to some cryptoassets, because some virtual assets are not aimed at economic development and do not have the function of financing or ensuring the financing of sustainable economic development.

According to Charles Rendell, ex-head of the UK Financial Conduct Authority (FCA): " The social purpose of regulated financial markets is to facilitate economic growth by enabling people's savings to be channelled to productive business ventures. The issue and trading of speculative cryptoassets serves no such social purpose. ... The aim of promoters of speculative cryptoassets in lobbying for a regime which legitimises their issue and trading is to obtain the "halo" of financial services regulation in order to persuade more people to part with real money in exchange for volatile tokens with no inherent value. As recent events have shown only too clearly, speculative crypto not only serves no social purpose: it often impoverishes vulnerable people; and on the way there, it often gravely damages our environment"[5 p. 15].

Thus, defining the subject of legal regulation of cryptocurrency, and the purpose of regulation is not only the state supervision of compliance with license conditions, but also the protection of consumer rights for economic growth and overcoming the negative consequences of speculative transactions on cryptoasset markets, British experts propose to separate part of cryptoassets for their regulation, as gambling tools.

The opposite opinion is expressed by ASTRAEA Group: "These characteristics may be novel in comparison to those of assets thought traditionally to have intrinsic value (such as fiat currency, stocks and commodities), but it does not follow that their value is non-existent or not

‘intrinsic’”[6]. Thus, paying attention that unlike gambling, the consumer assesses the risks and that in cryptoassets there may be non-traditional values that make up their value and that still need to be researched.

Protecting the rights of consumers of the cryptoassets market is primarily to determine which cryptoassets are regulated, and therefore the priority of consumer rights protection should be decisive for the choice of methods of legal regulation of cryptoassets by Ukraine. This is what should serve the ultimate goal of "Creation of productive and fair markets. This requires reliable and effective institutions that create opportunities for development and promote entrepreneurship in a well-functioning market economy” [7. p. 114].

Thus, based on the international experience in Ukraine should be determined:

- the possibility of a scientifically based separation of unsecured, speculative virtual assets for the application of a special regime of legal regulation similar to the regulation of gambling;
- the need to introduce a definition of the "intrinsic value/cost" of a cryptoasset and invite the criteria for the presence of intrinsic value/cost;
- the need to clearly separate virtual assets that work for the development of the economy from those that only "use the aura of legality" and do not have economic mechanisms in their essence, but only use distributed ledger technology (blockchain) for processes similar to gambling;
- the need for different legal regulations to protect the rights of consumers of services for virtual assets of a financial nature and those aimed at gambling, including the separate development of social protection mechanisms for consumers of financial virtual assets (cryptoassets), such as a system of guaranteeing deposits of individuals.

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