

TO THE ISSUE OF CLASSIFICATION OF VIRTUAL ASSETS IN FOREIGN COUNTRIES AND THE PROBLEM OF THEIR INTERNATIONAL AND NATIONAL REGULATORY DEFINITION

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Abstract - This article examines the classification of virtual assets in the UK. The conceptual basis of virtual assets and their consolidation in the legislation of Great Britain is defined. A broad analytical review of the classification of virtual assets in Great Britain was conducted, in particular it was found that virtual assets are classified into exchange tokens, utility tokens and security tokens. Judicial practice regarding the regulation of certain types of virtual assets is highlighted. The results of this study will allow us to understand exactly how Great Britain classifies virtual assets, to contribute to the development of the scientific and practical research base for the regulation of the virtual assets market.

Keywords - Great Britain, Virtual Assets, Crypto Assets, Token.

I. INTRODUCTION

The active development of virtual assets and the expansion of their users around the world lead to the emergence of new types of virtual assets. However, different regulatory bodies and agencies use different terms and approaches to classification, creating confusion and legal uncertainty. This in turn creates instability and uncertainty for businesses and investors. In this regard, there is an urgent need to establish a single and unified system of classification of virtual assets.

Great Britain, takes a leading position in the field of regulation of virtual assets thanks to a comprehensive and effective approach to this issue. The country was among the first to actively develop and implement regulatory policies in this area.

In addition, the UK is known for its approach to the regulation of technology and innovation, which provides flexibility and adaptability in the legal regulation of this sector. The UK government actively supports the development of technologies, including blockchain, and helps create a favorable environment for their development. The country ensures the relevance and compliance of its legislation with the rapid technological development in the field of virtual assets, in particular, the regulatory definition and classification of new types of assets.

Analysis of recent research and publications Issues of legal regulation of virtual assets in Great Britain were dealt with by such European legal scholars as C. Wronka, L. Haffke, M. Fromberger, P. Zimmermann, S. Huang indirectly determined the classification of virtual assets. However, there is a lack of research in the current literature on a comprehensive legal analysis of the classification of virtual assets in Great Britain.

The purpose of the article is to analyze modern approaches to determining the classification of virtual

assets in Great Britain in order to create effective legal mechanisms for their regulation, as well as to borrow the most universal and accurate wording of the classification of virtual assets that can be implemented in the legislation of Ukraine.

II. THE MAIN MATERIAL

Before proceeding to the classification of virtual assets, it is necessary to determine the conceptual basis of virtual assets and their consolidation in the legislation of Great Britain. Thus, the legislator equates the concepts of "virtual assets", "digital assets" and "crypto-assets", and there is no distinction between these concepts in the legislation.

According to the UK Government's Consultation Paper "Policy paper. Factsheet: cryptoassets technical", cryptoassets are an accumulation of value that can be digitally transferred or exchanged [1]. The UK Treasury's Consultation Paper "Future financial services regulatory regime for cryptoassets" states that a crypto-asset should be considered to be any cryptographically protected digital representation of value or contractual rights that:

(a) may be transmitted, stored or traded in electronic form, and

(b) use technology that supports the recording or storage of data (which may include distributed ledger technology, DLT) [2].

In the UK, cryptoassets are also commonly equated with "tokens" or "cryptocurrency". However, the UK Treasury's Consultation Paper recommends avoiding the use of the term "cryptocurrency" as it creates a potentially unjustified equivalence of cryptoassets with fiat currencies.

Regulation of crypto-assets (virtual assets) in Great Britain is carried out by the Financial Regulation and Supervision Authority (hereinafter - FCA). The FCA is the UK's Anti-Money Laundering and Counter-Terrorist Financing (AML/CTF) regulator for crypto-assets under the Money Laundering, Terrorist

Financing and Transfer of Funds (Information on the Payer) Regulations 2017 [3]. The FCA focuses on regulating the conduct of both retail and wholesale financial services firms, but cryptoassets themselves are generally unregulated.

The vast majority of cryptoassets are currently not regulated by the FCA, and cryptoassets themselves are not subject to financial compensation mechanisms such as the Financial Services Compensation Scheme (FSCS) or the Financial Ombudsman Service (FOS).

However, when crypto-assets are traded on existing regulated platforms or through the use of statutory mechanisms such as contract for differences (CFD), they fall under the FCA's remit. In addition, although cryptoassets are unregulated, cryptoasset providers and custodial wallet providers are required to register with the FCA to comply with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

The UK's Advertising Standards Agency (ASA) has also stepped in to oversee cryptoassets, regulating the promotion of cryptoassets to consumers through increased scrutiny of social media, web pages and advertising under the UK Advertising Code. Currently, all unregulated cryptoassets are subject to the Advertising Code.

In 2022, the government announced plans to tighten regulations on some forms of crypto-assets to protect consumers by bringing them under FCA regulation. A timeline for this work has yet to be determined, but is expected to take effect no earlier than 2023. After the date when the FCA gains powers to regulate most forms of cryptoassets, the ASA will nevertheless continue to oversee liability issues in relation to all forms of cryptoasset advertising. NFTs are excluded from the changes announced by the government and will therefore remain within the remit of the Advertising Code for both misleading and liability issues once these regulatory changes come into force [4].

Separately, we draw your attention to the fact that the Government of Great Britain has built new methods of legal information from state bodies, which include instructions, recommendations, information guides, manuals, etc.

In the context of determining the properties and providing a legal assessment of crypto-assets in Great Britain, the decision of the England and Wales High Court in the case of *AA v. Persons Unknown* and *& Ors, Re Bitcoin* of 17.01.2020 deserves special attention, since the Court for the first time came to the conclusion that a crypto-asset can be owned by a person if a number of criteria are met. The claimant filed a claim for restitution due to blackmail and demanding a ransom for the decryption of the computer systems affected by the hacker attack in a crypto-asset, namely 96 Bitcoins. Similar cases at that time did not recognize crypto-assets as a thing in action, but the High Court concluded that a crypto-asset can be property. The court's reasoning was

based on the fact that a crypto-asset must meet the four criteria set out in Lord Wilberforce's classic definition of property in *National Provincial Bank v. Ainsworth* from 1965. The criteria must include:

1. certainty;
2. the possibility of being identified by third parties;
3. the ability by its nature to be assumed by third parties; and
4. have a certain degree of permanence.

The High Court ruled in favor of the claimants and ordered full restitution [5]. The same approach was taken by the UK court in *Ion Science v Unknown Persons 2020* and *Wang v Darby 2021*, and reflected in the New Zealand High Court decision in *Ruskoe v Cryptopia Ltd 2020*.

Another property of cryptoassets is that they all use some form of distributed ledger technology (DLT). According to the UK HMRC's *Crypto Assets Guide "CRYPTO10200"*, distributed ledger technology (DLT) is a digital system that records details of transactions in multiple places at the same time. Unlike traditional databases, distributed ledgers have no central data repository or administration functions. The ledger acts as an immutable record of all transactions that have taken place on the network before. An application of DLT is the Bitcoin blockchain, which acts as a public record of all transactions that have ever taken place [6]. However, not all DLT applications involve cryptoassets.

Attention should be focused precisely on the classification of tokens, which are one of the components of virtual assets. The most detailed examination of the types of cryptoassets and the state's treatment of them in the UK can be found in the July 2019 FCA Guidance on Cryptoassets [7], which was a response to the January 2019 FCA Consultation Paper on Cryptoassets. Crypto-assets were divided into unregulated and regulated, among which exchange tokens, utility tokens and security tokens were studied, and electronic money and stablecoins were included in the classification.

The most recent study of crypto-asset types is the UK Treasury's 2023 Consultation Paper on the Future Financial Services Regulatory Regime for Crypto-assets, which was mentioned earlier. Within its limits, in addition to those mentioned above, independent types of cryptoassets also include: NFT; stablecoins backed by fiat currency; asset-linked tokens; tokens tied to the product; tokens with crypto support; algorithmic tokens; control tokens; and fan tokens.

Exchange Tokens are not issued or maintained by any central authority and are intended to be used as a medium of exchange or for investment purposes. They use DLT technology to support data recording or storage. Exchange tokens are generally a decentralized tool for buying and selling goods and services without traditional intermediaries. The most famous token, Bitcoin, as well as Ethereum are examples of exchange tokens.

The Guidelines recommend using exchange tokens, as well as other types of cryptoassets, including stablecoins, for regular payments. Although they will also be outside the FCA's regulation, they will be subject to the Payment System Regulator, PSR, which has the functions of overseeing payments.

Utility tokens grant the holder access to certain goods or services on the platform. They use DLT technology to support the recording or storage of data and are created for a specific investment purpose. A company or group of companies typically issues tokens and commits to accepting tokens as payment for certain goods or services. Although utility tokens are not special investments, in some circumstances they may meet the definition of electronic money (like other tokens). In this case, activities with their participation may be regulated.

That is why, within the framework of the FCA Guidelines, utility tokens were first divided into purely utility tokens that provide rights and obligations, and electronic money.

A crypto-asset will be considered as electronic money when it:

1. electronically stored monetary value, which is a claim to the issuer;
2. issued upon receipt of funds for payment transactions;
3. is accepted by a person other than the issuer.

Security tokens are tokens with specific characteristics that provide rights and obligations similar to certain types of investments, such as stocks or debt instruments.

FCA also separates stablecoins. Their goal is that these tokens minimize volatility because they can be pegged to something to have a stable value, such as a fiat currency (backed by a government such as the US dollar) or precious metals such as gold.

The separation of stablecoins into separate types was carried out later in the UK Treasury Consultation Paper into fiat-backed and asset-backed tokens, which in turn are divided into commodity-backed and crypto-backed. This was done primarily so that future UK legislation could apply payment legislation specifically to fiat-backed stablecoins.

Commodity-backed tokens are a subset of asset-backed tokens that aim to maintain a stable value relative to an underlying commodity price by backing one or more real-world commodities or assets, or act as a digital representation of an underlying real-world asset, such as gold, property or oil.

Crypto-backed tokens are a subset of asset-backed tokens that link their value to other crypto-assets.

Electronic money, security tokens and stablecoins are regulated types of cryptoassets.

Non-fungible tokens (NFTs) are cryptoassets that provide digital ownership of a unique asset (such as a piece of digital art) using a technology such as DLT to support the recording or storage of data. NFTs do not provide the rights or functions associated with a

security token and do not function as a means of payment.

The legal status and legal meaning of NFTs was considered in the High Court case of Lavinia Deborah Osborne v Persons Unknown in 2022. This was a case of attempted theft of two NFTs that were taken from Ms Osborne's digital wallet, which was a clear example of the crypto asset fraud that occurred in the early in 2022. Cryptoasset cases are so complex that they require multi-pronged court consideration, so the judge carefully researched previous cases involving other types of cryptoassets. The case is significant in that NFTs were recognized for the first time as property that can be subject to injunctions like any other category of crypto-assets.

The judge decided that the NFT should be treated as property and given the characteristic of being located in a particular place where the owner resides, which in this case was the UK. After granting Ms Osborne's application, the judge ordered the defendant to provide the name, address, email address and other contact details that were available to those in whose name the relevant wallets are held, or details of their ultimate beneficial owners [8].

Another type of crypto-asset is algorithmic tokens — these are exchange tokens that aim to maintain a stable price primarily or in part through an algorithm that facilitates supply and demand changes between the coin and one or more crypto-assets that support it [2].

Governance tokens are a subset of utility tokens that are used exclusively by holders to vote on blockchain or network decisions, but do not provide any exclusive benefits or discounts [2].

Fan tokens are a subset of utility tokens that grant holders access to a variety of perks associated with fan membership, including voting on club decisions, awards, merchandise designs, and unique experiences [2].

III. CONCLUSION

Summarizing the above, we can conclude that Great Britain is indeed a leader in the recognition of virtual assets as a legal category. At this stage, it can be stated that the country has already created a basis for defining crypto-assets as a subject of legal regulation and protection. In particular, it is noteworthy that Great Britain is gradually coming to its own understanding of regulated and unregulated crypto-assets, as well as classifying them, focusing on the expansion and detailing of the regulation of the legal field in the future. Court decisions such as the case of AA v. Persons Unknown & Ors, Re Bitcoin and Lavinia Deborah Osborne v. Persons Unknown reflect the gradual formation of the legal status of virtual assets in the country. However, as in most countries, legal regulation of virtual assets in the UK is still developing and in flux, so changes and additions to regulation in the future are not only

possible, but necessary. That is why it is important to continue studying and monitoring the development of the legal status of virtual assets in Great Britain, which can also be an example for a similar development of regulation in Ukraine.

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