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International and Russian Legal Regulation of the Turnover of Crypto-assets: Conceptual-Terminological Correlation

Iaroslav K. Iarutin
Diplomatic Academy of the Ministry of Foreign Affairs of the Russian Federation
Moscow, Russian Federation

Elena E. Gulyaeva
Diplomatic Academy of the Ministry of Foreign Affairs of the Russian Federation
Moscow, Russian Federation

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virtual asset

Abstract

Objective: to assess the Russian legislation for its compliance with the international-legal approaches to shaping symmetrical regulation of crypto-assets and possibility to complement it with new international-legal categories reflecting the in-depth changes in the global economy and structure of international finance, determined by the broad introduction of new financial technologies based on distributed ledger technologies.

Methods: the methodological basis of the research is a set of general scientific methods of scientific cognition, among which of utmost importance are special-legal (formal-legal and comparative-legal) methods, complemented with risk-oriented approach, legal modeling and juridical forecasting. Applied integrally, they allowed comprehending the architecture, "letter and "spirit" of the modern international financial law and national legislation in their conceptual-terminological correlation and to forecast further development and adjustment of the legal regulation of crypto-assets turnover.

Corresponding author

Results: it was found that there appears a stable trend in the crypto-assets turnover regulation, according to which "soft" law dominates among the law sources (this is especially notable in the sphere of international financial law compared, for example, with conventions or international treaties); at the same time, there is a strengthening trend of "fragmentation" of international law with regard to crypto-assets turnover; the authors mark inconsistency of the conceptual framework contained in international acts and in the Russian legislation, as well as the gaps in the regime of crypto-assets turnover at the level of national law; the trends and forecasts are presented referring to the development of international-legal regulation of the sphere of crypto-assets.

Scientific novelty: consists, first of all, in a complex comparison, based on, among other aspects, the fundamentally new concepts of regulation of such progressive international-legal categories as cryptoasset, virtual asset, cryptocurrency, stablecoin, etc., some of them rarely used in the Russian legal discourse and actually never applied in legislation.

Practical significance: the scientifically grounded proposals are formulated, aimed at improving the conceptual-terminological framework of the Russian legislation in the sphere of crypto-assets turnover, implementation of which will allow constructing a common legal space with the technologically most advanced states, will help to improve investment climate and financial attraction of the state; will improve the national-legal regime of crypto-assets turnover from the viewpoint of not only actual market demands, but also state security interests and improving competitiveness of the Russian legislation.

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Contents

Introduction

According to the World Economic Forum, 10 per cent of the world's GDP will be saved through blockchain technology by 2025[1]. This said, according to the Financial Stability Board, in early 2022, the capitalization of the crypto-assets' market was $2.6 trillion[2]. In-depth changes in the structure of international finance, determined by the broad introduction of distributed ledger technologies, require that the global community build a symmetrical international-legal regulation, comprehensible for the market participants and national regulators. Besides, satisfying the interests of states, such regulation must not excessively hinder the development of financial technologies and new sectors of the global economy.

On the other hand, stemming solely from the current condition of the architecture of the norms of international financial law, one should ascertain the utmost importance of the national law. It is national law that stipulates the practical requirements having priority significance for the market participants.

At the same time, crypto-assets, apparently, are used beyond state boundaries. For this reason, despite the current international situation, the global community and developed countries are interested in cooperation (at least, in the sphere under study), aimed at regulating this environment. In this sense, the Russian Federation seems highly interested in an in-depth comprehension of not only "letter" bit also "spirit" of international-legal regulation. The above factors determine the need to conceptualize the Russian legislation and its evaluation for the compliance with the international-legal approaches. Given the "fragmentation of international law, it is especially important to synchronize financial regulation not only with the interests of state security but also with the imperatives of our time and actual needs of the market. We believe that building of legal regulation at the national level will require practice-oriented proposals in terms of complementing the Russian law with advanced international-legal categories (cryptoasset, virtual asset, cryptocurrency, stablecoin).

1. International-legal regulation of crypto-assets

1.1. Features of international financial law

Globalization of economy and formation of a common global economic system, assumingly, changes also the patterns in those fields of international law which are aimed at regulating economic relations. This enhances the trends of "fragmentation" and "denationalization" of the respective fields of international law (Mazhorina, 2018).

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1 Schwab, Klaus. The Fourth Industrial Revolution. Moscow, Eksmo. 2016.

2 FSB (2022). *Assessment of Risks to Financial Stability from Crypto-assets*. FSB, Basel. https://www.fsb.org/wp-content/uploads/P160222.pdf

Besides, the currently dominating source in the international; financial law is the "soft" law acts (Kudryashov, 2013a, 2013b, 2013c, 2014; Ní Aoláin, 2021; Borlini, 2020; Brummer, 2010). This is probably due to the fact that the procedure of "soft" law acts adoption allows their coordination in short timeframes (compared, for example, with conventions or international treaties). In a certain sense, the rapid development of financial technologies did not leave any choice for the humanity: either regulation is adopted quickly (after a concern of an international community emerges), or new economic sectors function beyond an international-legal field, which may ultimately directly influence the efficiency of the whole international law architecture.

This approach has its disadvantages, however. As was mentioned above, the international-legal regulation formed by the "soft" law acts is, as a rule, of narrowly specialized character. Thus, the main problem is the fact that the legal regulation being formed is not comprehensive; it is limited to certain practical fields. Moreover, with the "soft" law acts the international community points out to the states to some general directions of law-making; these directions are of recommendation character. The actual content of these international-legal norms, which are supposed to provide guidelines for the market participants, is determined by the states.

Nevertheless, one should also account for the fact that the international-legal regulation may change radically, as authoritative researchers propose fundamentally new concepts of regulation, including the concept of "decentralized regulation" (Nabilou, 2019).

1.2. Notion of crypto-assets in the international law

Although the notion of "cryptoassets" is very rarely used in the Russian legal discourse, including academic one, and is actually absent in law, its use seems most correct from the viewpoint of international-legal research. This is due to the fact that this notion is used not only by international market participants, but also by the leaders of G20 states (for example, cryptography issues were reflected in a number of clauses of G20 Bali Leaders' Declaration as of November 16, 2022[3]).

According to a definition formulated by the Financial Stability Board, crypto-assets are a digital representation of value, based on cryptography and distributed ledger technology (DLT), similar technologies, and which can be in both payment and investment goals[4] (Droll & Minto, 2022). Financial Stability Board emphasized that this definition does not

[3] *G20 Bali Leaders' Declaration*. (2022, 16 November). G20, Bali. https://www.g20.org/content/dam/gtwenty/gtwenty_new/document/G20 Bali Leaders' Declaration.pdf

[4] FSB. (2020). Final Report and High-Level Recommendations on Regulation, Supervision and Oversight of "Global Stablecoin" Arrangements. FSB, Basel. https://www.fsb.org/wp-content/uploads/P131020-3.pdf

comprise a digital representation of fiat currencies[5]. Apparently, this comment was made in order to demarcate crypto-assets and central bank digital currencies (CBDC), which are now actively developed by some states (Tsang & Chen, 2022; Keister & Sanches, 2023; Zellweger-Gutknecht et al., 2021). Also, Financial Stability Board implicitly indicated: although central bank digital currencies are not crypto-assets (Pomulev, 2021), the notion of crypto-assets includes cryptocurrencies, which are also digital currencies[6] (Geva, 2019).

Guided by prudential goals, the Bank for International Settlements (BIS) decided to devide between crypto-assets into groups with various risk levels, thus distinguishing tokenized traditional assets, crypto-assets with stabilization mechanism, i. e. stablecoins, and other crypto-assets, including, for example, the most well-known cryptocurrency Bitcoin[7]. Thus, an international-legal approach was elaborated, in compliance with which regulators and international financial institutions making transactions with crypto-assets are recommended to apply the following risk levels:

– for tokenized forms of traditional assets – at least, the risk level characteristic for the traditional (basic) asset;

– for stablecoins – the risk level based on the evaluation of the stabilization mechanism quality;

– for other crypto-assets without a stabilization mechanism – a fixed risk coefficient of 1250 %[8].

It is worth mentioning that international regulators pay special attention to stablecoins (Ferreira, 2021), as they carry a threat to the global financial system (Khisamova, 2020). First, criteria for evaluating the stabilization mechanism quality are actively elaborated today at international level[9]. Second, turning to the provision on the level of risks inherent to stablecoins, one may notice the following: it is recommended to consider the possibility of the risk level increasing beyond the risks associated with the stabilization mechanism (with further consideration for capital add-ons). Combined with the global nature of stablecoins, such concerns of the global community allows assuming that in the next few years it is the issues of stablecoins that will determine the need to form

5 *Ibid*.

6 Frankenfield, J. (2023, April 20). Digital Currency Types, Characteristics, Pros & Cons, Future Uses. *Investopedia*. https://www.investopedia.com/terms/d/digital-currency.asp

7 BCBS. (2021). *Consultative Document: Prudential treatment of cryptoasset exposures*. BCBS, Basel. https://www.bis.org/bcbs/publ/d519.pdf ; BCBS. (2022). *Consultative Document: Second consultation on the prudential treatment of cryptoasset exposures*. BCBS, Basel. https://www.bis.org/bcbs/publ/d533.pdf

8 BCBS. (2021). *Consultative Document: Prudential treatment of cryptoasset exposures*. BCBS, Basel. https://www.bis.org/bcbs/publ/d519.pdf

9 BCBS. (2022). *Consultative Document: Second consultation on the prudential treatment of cryptoasset exposures*. BCBS, Basel. https://www.bis.org/bcbs/publ/d533.pdf

a new – in a certain sense supranational – regulator, whose zone of responsibility will include the reduction of the global risks to financial stability (initially – solely in terms of stablecoins)[10].

On the other hand, as was stated in the G20 Finance Ministers and Central Bank Governors Meeting Communiqué as of June 9, 2019, the key concern of the global community lies not in the plane of ensuring financial stability, but in the issues of due combating money laundering[11].

It must be stated that the conceptual framework formed by the Financial Action Task Force (FATF) for these purposes is of cardinally different character.

FATF specifies the notion of a "virtual asset" (VA) and a derivate notion of a virtual asset service provider (VASP) (Schmidt, 2021). Thus, a virtual asset represents value in a digital form, which can be used both for payment and investment purposes. According to FATF legal position, virtual assets do not include digital representations of fiat currencies, securities and other financial assets that are already covered elsewhere in the FATF Recommendations. FATF notices that all of the funds or value-based terms in the FATF Recommendations (e. g., "property," "proceeds," "funds," "funds or other assets," and other "corresponding value") include VAs[12].

Readers might be confused by a striking similarity of the notion "virtual asset", formulated by FATF, and the notion "digital asset", formulated by the Bank for International Settlements. The meaning and connotation of these notions, in the authors' opinion, differ: although cryptocurrencies (referring to digital currencies) are included into the "virtual asset" notion, FATF explicitly states that not all digital currencies – meaning central banks digital currencies – are subject to international standards in the sphere of virtual assets[13]. Thus, the word "digital", as estimated by the authors, in FATF interpretation has a connotation of "more reliable", "regulated", "controlled by the state", and in relation to assets proper (not "currencies") – "emitted by a large traditional business". Within a holistic consideration of the financial-technological landscape, this difference should be taken into account, we believe.

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10 Iarutin, Ia. K. (2023, March 13). *The Impact of Crypto-Assets on Governments and the International Community: A Forecast for 2035*. https://russiancouncil.ru/en/blogs/iaroslav-iarutin/the-impact-of-cryptoassets-on-governments-and-the-international-commun/?ysclid=ll689ieit3661964369

11 *G20 Finance Ministers and Central Bank Governors Meeting Communiqué* (2019, June 9). G20, Fukuoka. https://www.mofa.go.jp/policy/economy/g20_summit/osaka19/pdf/documents/en/communique.pdf

12 FATF. (2021). *Updated Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers*. FATF, Paris. https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-rba-virtual-assets-2021.html

13 *Ibid.*

From the practical viewpoint, it is the virtual asset service provider (VASP) that carries practical requirements in terms of combating money laundering, funding terrorism, funding mass weapons proliferation (further – AML/CFT); persons registered as VASP or recognized as such rank on a par with other "obliged persons" (for example, banks, stock exchanges, funds). According to a FATF definition, VASP is a physical or legal person, executing entrepreneurial activity having signs of, at least, one of the following types of activity:

– participation in and provision of financial services related to an issuer's offer and/or sale of a virtual asset.

– safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets; and

– transfer of virtual assets;

– exchange between one or more forms of virtual assets;

– exchange between virtual assets and fiat currencies;

– virtual asset service provider means any natural or legal person who is not covered elsewhere under the FATF Recommendations, and as a business conducts one or more of the following activities or operations for or on behalf of another natural or legal person.

As FATF emphasizes that the anchor notion of a "virtual asset", specific for the international-legal mechanism of AML/CFT, "does not include the digital representation of fiat currencies, securities and other financial assets, which had been regulated by FATF Recommendations before"[14], then for the purposes of AML/CFT the notion of "cryptoassets" appears fragmented: different rules are applied to virtual asset, i. e. cryptocurrencies, certain non-fungible tokens (NFT), tokens issued during initial coin offering (ICO), and other categories of crypto-assets, namely, tokenized forms of traditional assets and the most part of NFT[15]. This said, such division may be applied exclusively for legal norms in the sphere of AML/CFT; the so called virtual assets have no conceptual unity, as their purposes of use, frequency of transactions and market structure are fundamentally different. From the users' viewpoint, as a rule, cryptocurrencies are used for payment purposes, while tokens issues during ICO – for investment purposes (Blemus & Guégan, 2020), and NFT, which may be recognized as a virtual asset only in some cases, – for hedonistic and, probably, investment purposes.

Nevertheless, isolation of the "virtual asset" notion from the general landscape of crypto-assets has a broad practical significance. Specifically, in compliance with international-legal

[14] FATF. (2021). *Updated Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers*. FATF, Paris. https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-rba-virtual-assets-2021.html

[15] However, it is important to note that such division is only relevant for the international-legal AML/CFT mechanism. In practice, including in the context of financial markets regulation, the "utility token" category is isolated more often. Besides, according to a number of researchers, at the level of EU law (in particular, MiCa provisions) there is a trend towards an extensive interpretation of this category; this, probably, presages elaboration of a more detailed demarcation and classification of NFT (Tomczak, 2022).

recommendations, it is necessary to implement preventive measures with regard to operations associated with virtual assets, at the minimal threshold level of US$ 1,000 (Salami & Iwa, 2021; Kinsburskaya, 2020) (given the "soft law" nature, it is acceptable to set a lower threshold at the national level)[16]. At the same time, FATF emphasizes that in relation to the types of property previously regulated by Recommendations (tokenized forms of traditional assets) the legal regime in the aspect of AML/CFT may remain unchanged, that is, the minimal threshold level is US$ 15,000[17]. In other words, the regulator estimates the risk of money laundering, inherent in tokenized forms of traditional assets, at the same level as the traditional (basic) asset – unlike the Bank for International Settlements, which adopted a different approach.

Thus, one should state that "fragmentation" of international law exists. We believe this to be inacceptable: a consequence of such "fragmentation" is misunderstanding experienced by national regulators, market participants and legislators.

2. Reflection of the international legal norms in the legal system of the Russian Federation

2.1. Issues of conceptual-terminological correlation in international acts and legislation of the Russian Federation

As is known, the current version of the Russian legislation regulates the turnover of "digital financial assets" and "digital currencies". Assumingly, the "digital financial asset" notion, defines as "digital rights, including monetary claims, the possibility to implement rights on emission securities, the rights to participate in the capital of a nonpublic joint stock company, the right to claim transition of emission securities, which are stipulated by a decision on emitting the digital financial assets in the order established by this Federal Law "On digital financial assets, digital currency and making changes in certain legislative acts of the Russian Federation" No. 259-FZ of July 31, 2020, while their issuance, accounting and circulation are only possible by making (changing) records in an information system based on distributed ledger, as well as in other information systems"[18].

The legislators and the financial regulator must have planned that this notion would correlate with the "digital asset" notion, formulated by the Financial Stability Board. At the international-legal level, digital assets are a digital representation of value, which can

16 *Ibid*.

17 FATF. (2012–2022). *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*. https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf

18 On digital financial assets, digital currency and making changes in certain legislative acts of the Russian Federation. Federal Law of July 31, 2020 No. 259-FZ: (ed. as of January 11, 2023). *Collection of legislation of the Russian Federation*. 2020. No. 31. Article 5018.

be used both for payment and investment goals[19]; according to the Financial Stability Board, digital assets include crypto-assets. Probably, it was planned that the Russian digital financial assets would be crypto-assets? By the idea of a Russian legislator, digital financial assets would be issued by large Russian and international companies, and the process of issuance and expanse of such assets would entirely comply with the high requirements of the Bank of Russia. Apparently, mentioning of the "distributed ledger" in the Russian definition refers us to the international-legal notion of "cryptoassets". However, it is worth noting that, in the absence of a widely spread practice of digital financial assets issuance, the Russian law may be interpreted ambivalently. On the one hand, one may assume that the reference to "other information systems" may indicate the possibility to issue "centralized" digital financial assets, which would definitely not be crypto-assets. On the other hand, an analogous structure of a norm, i. e. reference not only to DLT but other technologies as well, is present in the international-legal definition of "cryptoassets".

If we assume that the Russian legislator was guided by the approaches stated by the Financial Stability Board, then all digital financial assets are crypto-assets. However, in any case the notion of "digital financial assets" does not comprise cryptocurrencies, stablecoins, NFT, tokens issued at ICO. Thus, the Russian definition of "digital financial assets" does not fully coincide with the notion of "cryptoassets", but includes only the regulated part of such assets, controlled by the state and large business.

Such inconsistency is logically complemented by the fact that, according to some researchers, the Russian interpretation of "distributed ledger" is somewhat different from the one accepted within international standards, namely, ISO 22739:2020[20] (Vergeles, 2022).

Returning to definitions, even more questions arise about using the adjective "digital" for the notion of "digital currency" in the same law. According to the Russian definition, digital currency is a "set of electronic data (digital code or representation), contained in the information system, which are offered and/or can be accepted as a means of payment, being not a unit of currency of the Russian Federation, a unit of currency of a foreign state and/or an international unit of currency or unit of accounting, and/or as a means of investment and in relation to which there is no person obliged to each owner of such electronic data, except for an operator and/or nodes of the information system, obliged only to provide that the order of issuance of these electronic data and making (changing) records about them into the said information system complies with its rules"[21]. In other words, in Russia digital currency is interpreted as solely non-state "currency" – moreover,

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19 FSB. (2020). *Final Report and High-Level Recommendations on Regulation, Supervision and Oversight of "Global Stablecoin" Arrangements*. FSB, Basel. https://www.fsb.org/wp-content/uploads/P131020-3.pdf

20 *Blockchain and distributed ledger technologies – Vocabulary*. https://www.iso.org/standard/73771.html

21 *Ibid*.

such "currency" is also not developed by large business (the requirements of the Central Bank of the Russian Federation for its development are not observed).

In this case, the adjective "digital" is used incorrectly for two reasons. First, it does not take into account the international-legal category of "central bank digital currency", which, being a digital one, is a legal means of payment (for example, a digital ruble currently designed). At the same time, according to the Basel Committee on Banking Supervision[22], central bank digital currency – unlike digital currencies in the interpretation of a Russian legislation – are a direct obligation of a central bank; the latter is the due "obliged person". Second, in the international business community the notion of digital currency is used as an umbrella term for virtual currencies, cryptocurrencies, and CBDC[23].

Actually, as was mentioned above, at the international level there exists the notion of virtual currency (Brown-Hruska & Wagener, 2018), which entirely complies with the meaning implied by a Russian legislation in the notion of digital currency. Specifically, by the FATF typology, virtual currency is a digital representation of value; it can be digitally traded. According to FATF, virtual currency has the functions of money (as a means of exchange, storage, and payment), but is not a legal means of payment in any jurisdiction[24].

Although today FATF uses an umbrella term "virtual asset" (the international regulator has currently withdrawn from using the "virtual currency" notion) (Kinsburskaya, 2019; Rozhdestvenskaya, 2022; Rozhdestvenskaya & Guznov, 2020), we believe that the connotation of the word "digital", with which this term is used in the Russian law, does not fully comply with the norms of international law, as, actually, the law refers only to crypto-assets and virtual currencies, not digital currencies in general. We believe this discrepancy confuses the international community interested in the Russian market and diminishes the informal prestige of our state.

It is worth noting that the notion of "stablecoin", to which international regulators pay special attention, as was mentioned above, is currently factually not represented in the Russian law. Although there is an opinion in the practical sphere, that stablecoin lacks an "obliged person", providing the functioning of stabilization mechanism, we believe this position to be inconsistent. According to the Basel Committee on Banking Supervision, central bank digital currencies were called a direct obligation of a central bank. In the absence of such explanations about other types of digital currencies, one may conclude that only a state (territory) may emit digital money with legal guarantees, that is, be a duly obliged

22 BIS. (2020). *Central bank digital currencies: foundational principles and core features*. BIS, Basel. https://www.bis.org/publ/othp33.pdf

23 Frankenfield, J. (2023, April 20). *Digital Currency Types, Characteristics, Pros & Cons, Future Uses*. https://www.investopedia.com/terms/d/digital-currency.asp

24 FATF. (2014). *FATF Report on Virtual Currencies Key Definitions and Potential AML/CFT Risks*. FATF, Paris. https://www.fatf-gafi.org/media/fatf/documents/reports/Virtual-currency-key-definitions-and-potential-aml-cft-risks.pdf

person. Thus, stablecoins are included into the notion of "digital currency", developed by the Russian law. At the same time, one has to state that – given the special attention paid by international regulators to the problem of stablecoins – this notion must be represented at the level of national law, including with the prospective development of macroprudential policies as the international legal norms in this sphere are inevitably developing.

Thus, the conceptual framework formulated in the current version of the Russian legislation does not fully comply with the international-legal recommendations; assumingly, the insufficient attention of legislators to the international-legal issues significantly complicates the legal regime of crypto-assets, making the Russian regulation murky for international business community. All this diminishes the competitive advantages of the Russian jurisdiction for the crypto business and interested financial structures.

2.2. Legal regulation of the crypto-assets turnover in the Russian Federation

If one turns to the essence of the international-legal position of the Russian Federation, it is essential to point out the lawful character of operations with crypto-assets, but with certain restrictions – both directly stipulated in law and existing exclusively at the practical level.

As for the prudential component, the Central Bank of the Russian Federation has not yet formulated the position regarding the level of risks inherent in digital financial assets[25]. It is obvious, however, that the turnover of digital financial assets will entirely remain within the Russian legal field, although with certain restrictions. For example, transactions with some digital financial assets are currently available exclusively for qualified investors[26]. At the same time, in regard to digital currencies (as interpreted by a Russian legislator), the position of a financial regulator is cardinally different. For example, according to Information Letter by the Central Bank of the Russian Federation "On certain types of financial instruments" of July 19, 2021 No. IN-06-59/52, trade organizers were recommended to refuse Russian and foreign emitters access to organized securities trading, if the rights of their owner to receive payments and/or the size of payments for them (size of income) or profitability of them depend on the rates of digital currencies[27].

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25 Central Bank urged to regulate the assessment of risks of banks investing into digital financial assets. *Interfax*. https://www.interfax.ru/business/878897

26 On the signs of digital financial assets, which may only be purchased by a qualified investor, on the signs of digital financial assets, the purchase of which by a person not being a qualified investor can be performed only within the limits, stipulated by the Bank of Russia, of the monetary funds transferred for their payment, and the total value of other digital financial assets transferred in consideration, on the said amount of monetary funds and the total value of digital financial assets: Instruction of the Bank of Russia of November 25, 2020 No. 5635-U (registered in the Russian Ministry of Justice on 21.12.2020 N 61622).

27 Information Letter by the Central Bank of the Russian Federation "On certain types of financial instruments" of July 19, 2021 No. IN-06-59/52. https://cbr.ru/StaticHtml/File/117596/20210719_in_06_59-52.pdf

From the viewpoint of combating money laundering, one should also mark the differences in legal regulation of digital financial assets and digital currencies. According to Article 6 of the Federal Law of August 7, 2001 No. 115-FZ "On combating legalization (laundering) of illegal incomes and terrorism funding", operations with digital financial assets are subject to obligatory control if their size exceeds 1 million rubles[28]. In our opinion, this measure complies with the international-legal recommendations, stating that the legal regime regarding traditional assets in tokenized form (for example, securities) does not carry any special character[29]. On the other hand, all operations with digital currency (as interpreted by a Russian legislator) are, in the opinion of the Bank of Russia, a priori suspicious, which is directly stated in the Classifier of features indicating an unusual character of an operation or transaction, appended to the Policy Directive of the Bank of Russia of March 2, 2012 No. 375-P "On requirements to the rules of internal control of a credit organization with a view of combating legalization (laundering) of illegal incomes and terrorism funding"[30]. Moreover, it should be noted that at the level of a lawyer's practice it is perceived that the frequency of "freezing" and blocking of bank accounts when executing transactions with digital currencies (and broader – with all virtual assets) based on the Federal Law of August 7, 2001 No. 115-FZ "On combating legalization (laundering) of illegal incomes and terrorism funding"[31] has increased sharply since the end of spring 2022[32]. In other words, the state is trying hard to restrict the turnover of digital currencies, but is doing it without introducing the relevant changes in law[33].

It should be highlighted also, that there are currently a number of restrictions regarding to the turnover of digital currency (in the Russian interpretation of the term). Specifically, according to Article 14 of the Federal Law of July 31, 2020 No. 259-FZ "On digital financial assets, digital currency and making changes in certain legislative acts of the Russian

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28 On combating legalization (laundering) of illegal incomes and terrorism funding: Federal Law of August 7, 2001 No. 115-FZ: (ed. as of January 9, 2023). (2001). *Collection of legislation of the Russian Federation*. *33*, part 1. Article 3418.

29 FATF. (2012–2022). *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*. FATF. https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf

30 On requirements to the rules of internal control of a credit organization with a view of combating legalization (laundering) of illegal incomes and terrorism funding: Policy Directive of the Bank of Russia of March 2, 2012 No. 375-P. (2012, April 18). *Vestnik Banka Rossii*, *20*.

31 On combating legalization (laundering) of illegal incomes and terrorism funding: Federal Law of August 7, 2001 No. 115-FZ: (ed. as of January 9, 2023). (2001, August 13). *Collection of legislation of the Russian Federation*, *33* (part I), Article 3418.

32 Iarutin, Ia. K. *Digital currency and the future of global policy*. https://russiancouncil.ru/analytics-and-comments/columns/cybercolumn/tsifrovaya-valyuta-i-budushchee-mirovoy-politiki/

33 *Ibid*.

Federation"[34], Russian organizations and physical persons – Russian residents – are prohibited to accept digital currency as a consideration for the goods and services transferred by them or to them. Although this thesis regarding digital currency was formulated for the first time at the law level, analysis of judicial practice shows that previously courts also negatively treated the use of digital currencies in contract obligations (Sereda, 2017). Besides, in compliance with the same Article, judicial protection for the above subjects is stipulated only in case of informing the Federal Taxation Service (further – FTS RF) about the existence of digital currency and execution of transactions with it. At the same time, it should be stated that in practice this issue turns on the absence of explanations of FTS RF, including the absence of a form for such reports. In this regard, it is apparent that only general obligations on informing a taxation body are currently detailed (for example, within the 3-NDFL form).

Besides, it is important to note a certain distinction, related to combating the illegal use of insider information and market manipulation – Countering Insider Dealing. By implication of Federal Law of July 27, 2010 No. 224-FZ "On combating the illegal use of insider information and market manipulation…"[35], it seems highly improbable to apply the Russian law on Countering Insider Dealing to organizations involved into circulation of digital currencies (as interpreted by the Russian law); assumingly, similar provisions will be applied in relation to the turnover of digital financial assets, although it is not explicitly stipulated by law (as follows from the regulated character of the organizations involved). We believe that the need to regulate the cardinally new types of property in this aspect will aggravate the numerous problems characteristic for the current mechanism of Countering Insider Dealing, including in its criminal-legal component (Lifshits & Yani, 2020; Arestova & Borbat, 2022; Ruchkina, 2019, 2022). On the other hand, applicability of the respective norms to the legal relations under study causes no doubts from the viewpoint of foreign (American) law as well (Verstein, 2019), which, assumingly, serves as an additional argument for inadmissibility of the above said distinction, made at the level of the Russian legislation and with the logic inherent in it.

Thus, the Russian legislation – in terms of conceptual framework, first of all – does not fully comply with the norms of international law. The built system of legal regulation has a number of drawbacks and inaccuracies. It appears that this situation – given the architecture of the international-legal norms under study – diminishes the authority of our country and its informal prestige; the unique interpretation of the norms

[34] Federal Law of July 31, 2020 No. 259-FZ "On digital financial assets, digital currency and making changes in certain legislative acts of the Russian Federation". (2020, August 3). *Collection of legislation of the Russian Federation*, *31* (part I), Article 501.

[35] On combating the illegal use of insider information and market manipulation and on making changes in certain legislative acts of the Russian Federation: Federal Law of July 27, 2010 No. 224-FZ: (ed. as of October 7, 2022). (2010). *Collection of legislation of the Russian Federation*, *31*. Article 4193.

of international financial law, stipulated in the Russian law, is unclear to the international business community. Despite the nature of the above norms of international law (mainly contained in the acts of "soft law"), that is, despite their recommendation character, the Russian Federation is extremely interested in their introduction. First, the international community offers certain common standards, introduction of which allows the state to exist in a common legal environment with the most technologically advanced states (speaking of a rather narrow sphere of crypto-assets); beyond any doubt, this promotes the investment attraction of the state, raises eh informal prestige of its leaders. At the same time – in the absence of introducing the legal approaches formulate in the "soft law" provisions – it is probable that the state ignoring them will face the methods known as "naming and shaming" (Fogelson, 2013a, 2013b). Second, given the high level of expertise of international regulators, one has to admit the usefulness of the formed international-legal approaches from the viewpoint of smoothing the structural problems of the global character, at the level of the Russian law.

3. Proposals on improving the Russian legislation

First of all, it seems important to bring the conceptual framework, formed at the level of the Russian law, in compliance with international standards. The notion of the "digital financial asset" should be substituted with the international-legal notion of "cryptoasset". We propose dividing crypto-assets into the "traditional asset in a tokenized form" (on the one hand, this notion is used at the level of the Bank for International Settlements; on the other hand, it is analogous to the currently used "digital financial assets") and the "unsecured (virtual) cryptoasset" (on the one hand, it is analogous to the term "unbacked cryptoasset" as an antonym for "asset-backed cryptoasset"; on the other hand, the presence of the adjective "virtual" refers us to the notion of "virtual asset" formulated by FATF).

We consider it important to additionally – probably in a separate law – specify the notion of a "digital currency", which, as was stated above, is broadly used by the market participants and international regulators, but with a different meaning. The meaning of the "digital currency" notion should be cardinally changed. There are two options in stating such novelties.

The first option: in a separate law, digital currency may be divided into the "secured digital currency", i. e. such digital currency for which there exists a person obliged for each owner of such electronic data, that is, a central bank, and "unsecured digital currency" ("digital currency" in the present edition of law). This variant seems logical , but somewhat utopian from the viewpoint of the state, as it devaluates the connotation of the word "currency" as a substance associated with the state (it turns out that cryptocurrency is also a currency, although of a different kind).

The second option: the "digital currency" notion would be abrogated and substituted for a "digital currency of a central bank", which would be divided by its functional purpose

(retail digital currency of a central bank, digital currency of a central bank for interbank settlements, etc.) and by a state (territorial) affiliation of the "obliged person" (national digital currency of a central bank, i. e. a digital ruble, and a foreign digital currency of a central bank, for example, a digital Yuan, a digital euro). This approach seems the most logical.

In that case, which category would "virtual currencies", including cryptocurrencies, belong to? As it appears, here one has to turn to the international-legal approach formulated by FATF. If one considers the situation on the long-term basis, then, guided by the goals of effective legal regulation, the state cannot isolate itself from the unpleasant theme, namely, introduction of the "virtual asset" notion, used by FATF, at the level of law. Then, virtual assets will comprise the above-mentioned virtual crypto-assets, non-state "currencies", including cryptocurrencies, stablecoins and certain non-fungible tokens recognized as virtual assets by the FATF logic. Given the current concern of the international community about these problems, is appears inevitable to distinguish the notion of "stablecoin" in law. According to the proposed logic, this will be an "unsecured (virtual) cryptoasset with a stabilization mechanism".

We believe it to be especially important to demarcate between the said types of property from the viewpoint that constructing of an efficient regulation cannot be performed in isolation from the practice of their implementation (Sereda, 2019); this said, attention to practical issues seems no less important than following international-legal recommendations.

Second, it is necessary to elaborate new approaches to macroprudential regulation. Assumingly, given the regulated and absolutely transparent architecture of digital financial assets (according to the proposed changes – traditional assets in tokenized form), it is admissible to set the level of risk characteristic for the traditional (basic) asset (with the regulator's right to increase the risk level). It also seems inevitable that the current prohibitory rhetoric regarding "virtual assets" will change. In the authors' opinion, given the public-legal nature of the issues of financial stability, such development is only possible after the respective approaches emerge at the level of international regulators and provided the Russian party is unconditionally consent with them.

At the same time, when constructing national regulation, it is essential to realize that, at the international law level, a scenario seems highly probable, according to which the attitude to stablecoins will change in the nearest years. Given the global nature of stablecoins, it would be logical to provide a common – supranational – supervision over their functioning, including, probably, in the form of setting common criteria for supervision at the national level. In the future, a new international body for prudential supervision might be formed[36]. Researchers believe that stablecoin may be identified in the future as

[36] Iarutin, Ia. K. (2023, March 13). *The Impact of Crypto-Assets on Governments and the International Community: A Forecast for 2035*. https://russiancouncil.ru/en/blogs/iaroslav-iarutin/the-impact-of-cryptoassets-on-governments-and-the-international-commun/?ysclid=ll689ieit3661964369

monetary funds (for the goals of accounting and reporting) (Tetyushin, 2022), but, as follows from the above-described positions of international regulators, the level of risk of such cryptoasset even now (theoretically) depends on the quality of the stabilization mechanism. The international-legal recommendations regarding the assessment of the stabilization mechanism will, undoubtedly, keep being specified.

From the viewpoint of our country, the lack of the "stablecoin" notion at the level of law may deprive the financial system of the Russian Federation, lready weakened by international sanctions, of a competitive advantage consisting in a hypothetic opportunity to use reliable (supervised) stablecoins, which face a lower level of sanction load.

Third, the lack of the "virtual asset" notion in the Russian legal framework logically leads to the lack of notion "a virtual asset service provider (VASP)". From the viewpoint of the whole international AML/CFT architecture, this notion is the axial one, as the international community imposes the main part of obligations in this sphere on the "obliged persons" (for example, banks, insurance companies); for the virtual assets, i. e. partially for crypto-assets as well, such person is VASP. Thus, such circumstance negatively influences the efficiency of the national AML/CFT system.

Fourth, despite numerous problems related to the Russian practice of applying the Law on combating the illegal use of insider information and market manipulation, it seems important to include into the list of insiders also "virtual asset service providers (VASPs)". Probably, insiders should include not all VASP, but only those complying with certain criteria, for example, those with an annual turnover exceeding an amount stipulated by the regulator. This change seems important, as from the financial-economic viewpoint the crypto-assets market does not differ from traditional financial markets; it also may face misuse and unfair practices, with significant economic damage.

Fifth, given the above proposals, it appears especially important that the state pays attention to the changes at the level of international law and positions of international regulators, including to expert analytics of these issues. The sphere of crypto-assets is too large-scale, and ignoring it by the state may lead to numerous consequences, including in such sensitive fields as combating money laundering, funding terrorism, and providing financial stability.

Conclusion

Thus, one may conclude that the international-legal position of the Russian Federation in regard to crypto-assets is of moderate liberal character. At the level of federal legislation, the notions of "digital financial asset" and "digital currency" were introduced; the turnover of these categories is legal, although some restrictions exist. We believe that the conceptual framework, formulated by the Russian legislation, does not fully comply with the international

standards, which is a substantial drawback of the national legal system (and, probably, financial system), diminishing the business attraction of our country. Assumingly, the unique Russian approach is simply incomprehensible for the international business community. Apart from that, i. e. in the issues of prudential regulation, combating money laundering, and civil-legal features, the Russian legislation entirely complies with the letter and spirit of international-legal recommendations.

Based on the above, one may assume that the further development of the Russian law will be consecutive. Undoubtedly, the conceptual framework will sooner or later be changed in compliance with the international-legal recommendations. Speaking of the logical vector of the Russian regulation, the state rightly places increased stake on digital financial assets, which will be issued by large business observing the high standards imposed by a financial regulator. The turnover of digital currencies (in the Russian interpretation) will continue to be restricted in practice, but in the absence of an explicitly prohibitory rhetoric at the level of law[37]. The market of the so called "digital currencies" will be substituted by a central bank digital currency, i. e. the digital ruble currently being designed.

It is highly likely that the more technologically advanced countries will opt for a deeper integration of crypto-assets into the legal reality, bringing new financial markets in compliance with international standards. Accordingly, from a conceptual point of view, when forming a legal regime at the level of national law, it is essential to stem from exactly this estimation.

At the same time, given the practical need for actualization of the national law, it seems necessary not only to comprehend the international-legal reality, but also to pay attention to futurology, that is, the trends and forecasts related to the development of international law. It is the requirements of the future that the national legal system should be maximally adapted to, if we really wish to be in the vanguard of the global development.

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Authors information

Iaroslav K. Iarutin – post-graduate student, Department of International Law, Diplomatic Academy of the Ministry of Foreign Affairs of the Russian Federation
Address: 53/2 Ostozhenka Str., building 1, 119021 Moscow, Russian Federation
E-mail: iaroslaviarutin@icloud.com
ORCID ID: https://orcid.org/0000-0003-0036-6494
Web of Science Researcher ID:
https://www.webofscience.com/wos/author/record/HJI-6696-2023
Google Scholar ID: https://scholar.google.com/citations?user=w-imCpMAAAAJ
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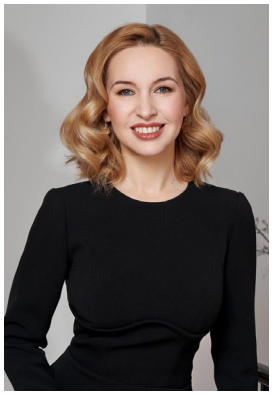

Elena E. Gulyaeva – Candidate of Sciences in Jurisprudence, Associate Professor, Department of International Law, Diplomatic Academy of the Ministry of Foreign Affairs of the Russian Federation
Address: 53/2 Ostozhenka Str., building 1, 119021 Moscow, Russian Federation
E-mail: gulya-eva@yandex.ru
ORCID ID: https://orcid.org/0009-0002-2708-8332
Scopus Author ID: https://www.scopus.com/authid/detail.uri?authorId=56906889200
Web of Science ResearcherID:
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Authors' contributions

Iaroslav K. Iarutin compiled the manuscript draft; performed comparative analysis; collected, analyzed and summarized literature; prepared and edited the manuscript; interpreted the overall research results; formulated the key conclusions, proposals and recommendations; formatted the manuscript.
Elena E. Gulyaeva formulated the research idea, goals and tasks; elaborated the methodology; critically reviewed and edited the manuscript; interpreted the specific research results; approved the final version of the article.

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Международное и российское правовое регулирование оборота криптоактивов: понятийно-терминологическая корреляция

Ярослав Кириллович Ярутин ✉

Дипломатическая академия Министерства иностранных дел Российской Федерации
г. Москва, Российская Федерация

Елена Евгеньевна Гуляева

Дипломатическая академия Министерства иностранных дел Российской Федерации
г. Москва, Российская Федерация

Ключевые слова

Виртуальный актив,
законодательство,
криптоактив,
криптовалюта,
международное право,
право,
стейблкоин,
токен,
цифровая валюта,
цифровые технологии

Аннотация

Цель: оценка российского законодательства на предмет его соответствия международно-правовым подходам к формированию симметричного регулирования оборота криптоактивов и возможности дополнения новыми международно-правовыми категориями, отражающими глубинные изменения в мировой экономике и структуре международных финансов, обусловленные широким внедрением новых финансовых технологий, в основе которых находятся технологии распределенного реестра.

Методы: методологическую основу исследования составляет совокупность методов научного познания, среди которых важное значение имеют специально-юридические (формально-юридический и сравнительно-правовой) методы, дополненные риск-ориентированным подходом, правовым моделированием и юридическим прогнозированием, в совокупности позволившие осмыслить архитектуру, «букву» и «дух» современного международного финансового права и национального законодательства в их понятийно-терминологической корреляции, спрогнозировать дальнейшее развитие и корректировку правового регулирования оборота криптоактивов.

✉ Контактное лицо

Результаты: выявлено, что в регулировании оборота криптоактивов устойчивой становится тенденция доминирования среди источников актов «мягкого» права (особенно это заметно в сфере международного финансового права в сравнении, например, с конвенциями или международными договорами); наряду с этим усиливается тенденция «фрагментации» международного права в части оборота криптоактивов; отмечено несоответствие понятийного аппарата, содержащегося в международных актах и российском законодательстве, и пробелы в режиме оборота криптоактивов на уровне национального права; обозначены тенденции и прогнозы развития международно-правового регулирования сферы криптоактивов.

Научная новизна: состоит прежде всего в комплексном сопоставлении на основе в том числе принципиально новых концепций регулирования таких прогрессивных международно-правовых категорий, как криптоактив, виртуальный актив, криптовалюта, стейблкоин и другие, отдельные из которых редко используются в российском правовом дискурсе и практически не употребляются в законодательстве.

Практическая значимость: сформулированы научно обоснованные предложения, направленные на совершенствование понятийно-терминологического аппарата российского законодательства в сфере оборота криптоактивов, реализация которых позволит в перспективе выстроить единое правовое пространство с наиболее технологически развитыми государствами, будет содействовать улучшению инвестиционного климата и финансовой привлекательности государства; усовершенствует национально-правовой режим оборота криптоактивов не только с точки зрения реальных потребностей рынка, но и интересов государственной безопасности и повышения конкурентоспособности Российской Федерации.

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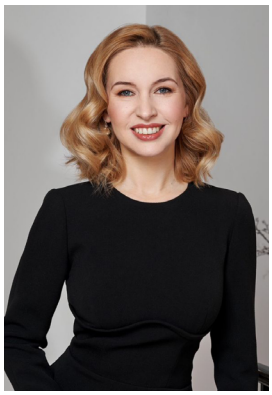
Сведения об авторах

Ярутин Ярослав Кириллович – аспирант кафедры международного права, Дипломатическая академия Министерства иностранных дел Российской Федерации, г. Москва
Адрес: 119021, Российская Федерация, г. Москва, ул. Остоженка, 53/2, стр. 1
E-mail: iaroslaviarutin@icloud.com
ORCID ID: https://orcid.org/0000-0003-0036-6494
Web of Science Researcher ID:
https://www.webofscience.com/wos/author/record/HJI-6696-2023
Google Scholar ID: https://scholar.google.com/citations?user=w-imCpMAAAAJ
РИНЦ Author ID: https://elibrary.ru/author_items.asp?authorid=1175345



Гуляева Елена Евгеньевна – кандидат юридических наук, доцент кафедры международного права, Дипломатическая академия Министерства иностранных дел Российской Федерации
Адрес: 119021, Российская Федерация, г. Москва, ул. Остоженка, 53/2, стр. 1
E-mail: gulya-eva@yandex.ru
ORCID ID: https://orcid.org/0009-0002-2708-8332
Scopus Author ID: https://www.scopus.com/authid/detail.uri?authorId=56906889200
Web of Science Researcher ID:
https://www.webofscience.com/wos/author/record/ISB-2036-2023
Google Scholar ID: https://scholar.google.com/citations?user=KQqjjYAAAAAJ
РИНЦ Author ID: https://elibrary.ru/author_items.asp?authorid=756727

Вклад авторов

Я. К. Ярутин осуществлял составление черновика рукописи; проведение сравнительного анализа; сбор, анализ и обобщение литературы; подготовку и редактирование текста статьи; интерпретацию общих результатов исследования; формулировку ключевых выводов, предложений и рекомендаций; оформление рукописи.
Е. Е. Гуляева осуществляла формулирование идеи, исследовательских целей и задач; разработку методологии; критический пересмотр и редактирование текста рукописи; интерпретацию частных результатов исследования; утверждение окончательного варианта статьи.

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