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MISUSE OF DIGITAL ASSETS: CURRENT LEGISLATION, CHALLENGES AND RECOMMENDATIONS**

In 2020, the Republic of Serbia adopted the Law on Digital Assets (Official Gazette of the Republic of Serbia no. 153/2020). Legal regulation of the issuance, use and circulation of digital assets is present in a very small number of European countries. Although the 2020 European Union Proposal for a Regulation on Markets in Crypto-assets encourages the regulation of the crypto-assets market at the national level of member states, the question can be raised whether the available mechanisms and means are effective enough in preventing the abuse of digital assets and in protecting the integrity of crypto-assets market.

Bearing in mind that the international standards in the field of abuse prevention have been adopted recently, while some are still in the process of being established, we start from the assumption that it will be necessary to additionaly improve both legislation and institutional capacities in the mentioned area at the national level. In the first part of the paper, we first point out the emerging forms of abuse of digital assets, and then we will look at the international standards that define potential prevention mechanisms. After that, the legislation of the Republic of Serbia in the field of prevention of abuses related to digital assets and the crypto-assets market will be analysed. Therefore, the method of content analysis and the dogmatic method dominate in this paper. By applying the mentioned methodology, we try to give recommendations for improving the mechanisms of prevention of abuses at the national level.

Keywords: digital assets, abuse prevention, legislation, challenges, improvement.

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1. INTRODUCTION

The digital asset market has both positive and negative aspects. The positive are reflected in the fact that transactions on the mentioned market are fast, and this enables efficient investment in the economy with great cost savings. At the level of the European Union, digital assets are not regulated by regulations governing the field of financial services. Its issuance, circulation and use were regulated for the first time by the Regulation on Crypto-Asset Markets (MICA Regulation), which was adopted by the Council of the European Union on May 16, 2023.[1] Before its adoption, the operation on digital asset trading platforms was not regulated. This represented a great risk for potential investors, which had negative consequences for the integrity of the capital market.[2] The aforementioned area was regulated in the Republic of Serbia for the first time in 2020 with the adoption of the Law on Digital Assets (*Official Gazette of the Republic of Serbia* no. 153/2020), i.e. three years before the adoption of the regulation at the level of the European Union. The goal of passing both regulations was primarily to improve the functioning of the digital assets market, but also to protect consumers on the capital market and improve fiscal stability. Due to the lack of a unified approach at the level of the European Union, as well as regulations at the national level, the digital assets market seemed like an unsafe area for investment and was suitable for various types of abuse.

Cryptocurrencies were a particular suitable tool for money laundering, not only because they enabled fast transactions at the international level, but also because of the lack of effective control due to the existence of different regulations at the national level (EUROPOL, 2021, p. 10). However, they have also been used for money laundering in connection with several predicate crimes such as fraud of drug trafficking. The EUROPOL report lists money laundering as the main crime associated with the use of cryptocurrencies. In addition, cryptocurrencies are susceptible to other forms of abuse. Namely, apart from being susceptible to theft through various malicious software, they are also used for various extortion schemes (*Ibid.,* p. 11).

In addition, for the benefits of the economy, regulating the functioning of the digital assets market should also contribute to the reduction of tax evasion, because due to the lack of regulation, until the adoption of relevant regulations, transactions made through digital assets, which were otherwise subject to taxation, could be hidden. Therefore, the regulation of the digital property market is of great importance from the aspect of preserving the integrity of public finances.

The legal regulation of the functioning of the digital assets market certainly represents a significant step in the suppression of various abuses that were associated with the said market. However, additional adaptation of both legislation and institutional capacities is necessary to prevent abuses. In particular, it is necessary to take into account the

[1] Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937. Available at: https://eur-lex.europa.eu/resource.html?uri=cellar:f69f89bb-fe54-11ea-b44f-01aa75ed71a1.0001.02/DOC_1&format=PDF, (1. 7. 2023).

[2] On abuses on the capital market, see: Kostić, J. 2018. Izazovi harmonizacije krivičnopravne zaštite tržišta kapitala sa pravom Evropske unije – primer italijanskog zakonodavstva, *Strani pravni život*, 62(2), pp. 119-137.

inventiveness of persons who are prone to fraud in this area, and therefore, at the international and national level, the risks of abuse on the digital assets market should be continuously monitored and necessary measures should be taken to reduce them.

In our paper, we start from the assumption that in the Republic of Serbia it is necessary to take additional measures in order to improve the protection of participants in the digital assets market against various types of abuse. That is why in our paper we use the method of analysing the content of various documents, as well as the dogmatic-legal method. This is how we want to point out the need for continuous harmonization of national legislation not only with international standards in the field of prevention of abuses in the cryptocurrency market, but also with the needs of practice at the national level.

2. ABUSE OF CRYPTOCURRENCIES AND MONEY LAUNDERING

Abuses on the cryptocurrency market in the previous period were facilitated by various factors, such as the anonymity and speed of transactions, as well as the possibility of a sudden increase in the exchange rate of cryptocurrencies. It was also conducive for hiding the origin of assets and money laundering. Anonimity also contributed to tax evasion if taxable transactions were carried out through cryptocurrencies. This made it impossible to detect persons committing tax evasion, and therefore it was not possible to apply an adequate sanction (Houben & Snyers, 2018, p. 53).

Some authors believe that crypto-currencies are not completely anonymous, but rather pseudo-anonymous. One of the main reasons for this is the use of blockchain technology, thanks to which data can be changed, while previous versions remain written. This is of course the case when it comes to Bitcoin, the most commonly used type of cryptocurrency. According to those authors, even though bitcoin addresses do not have a registered name, they can be linked to real-life identity, as every investor has an obligation to record his/her personal information before purchasing cryptocurrency. However, the same authors believe that the transparency of cryptocurrency trading is less than the transparency of the exchange that takes place by traditional financial institutions (Novaković, 2021, p. 102), so this circumstance could eventually favor various abuses.

In addition to the above, abuses related to virtual assets were also incited by the fact that market participants are people from different countries, where there are no effective money laundering control, and there is lack of a central intermediary, i.e. issuer (Houben & Snyers, p. 54). Therefore, it was necessary to establish standards at the international or European Union level that would contribute to the harmonization of national regulations governing the digital property market, with the aim of establishing mechanisms for assessing the risk of money laundering and other abuses, and undertaking continuouns control by competent authorities.

The risk of abuses related to digital assets can also be represented by excessively strict regulations that prohibit the establishment of a market in that area or establish strict regulatory control. This is why there is polarization between those who advocate decentralization in the cryptocurrency market and the absence of regulation and those who belive that crypto-assets market regulation can contribute to financial stability (Collins,

2022, p. 8). In our opinion, the capital market should exist, but the regulatory control should be adequate, timely and based on the risk assessment of various types of abuses.

Many institutions and organizations have recently been interested in improving the rules to prevent money laundering as an activity most often associated with cryptocurrencies. In 2018, The Financial Action Task Force (FATF) adopted the first version of risk-based anti-money laundering guidance on virtual currencies and digital assets service providers, which was updated in October 2021. The aim of its adoption was to improve the supervision of the activities of providing services in the cryptocurrency market, as well as their exchange and use. The recommendations of the guidelines should enable service providers for the digital assets market to identify indicators at the national level that indicate the possibility of activities related to money laundering (FATF, 2021, p. 4).

The authors believe that in the future, cryptocurrencies could be used to finance various activities, such as e.g. campaign financing, public procurement or lobbying. When it comes to reporting on such activities, especially when it comes to the public sector, it is necessary to adapt the way of reporting to the nature of cryptocurrencies. The authors state that with some of them, due to the so-called privacy function, it is very difficult to track transactions. One such privacy coin is Monero, which mixes with previous transactions to hide the details of the one currently being executed (Burrus, 2018).

This type of activity has been proven in practice to cover up criminal acts and is often used for money laundering. However, cryptocurrencies are also a convenient tool for concealing corruption. Precisely when it comes to the so-called cryptocurrency mixing, money is transferred to different crypto wallets. For this purpose, a "trusted party" is used to receive money from the original IP address and use an alternative address or address to deliver the funds to the end user (Nicholls *et al.* 2021, p. 163974). Transactions related to some cryptocurrencies such as bitcoin can be tracked, so it is possible to determine from which addresses the transactions were made (Murtezić, 2021).

Misuse of cryptocurrencies is possible in various circumstances, even by persons who should take care of the prosecution of criminal offences and confiscation of illegally acquired property by their execution. Thus, in the "Silk Road" affair from 2013, the US government confiscated the official Bitcoin wallet. Namely, in 2015, it happened that federal agents who were investigating the case diverted part of the cryptocurrencies to their personal digital wallets. The ability to track cryptocurrencies has been greatly hampered by the rapid development of cryptocurrencies and the finding of ways to hide transactions. Coins such as Moneros have a hidden sending address, receiving address and transaction amounts, which is important for conducting criminal investigations (Burrus, 2018). It is the adaptation to the new circumstances that will represent a great challenge both for the legislation of the European Union and for national legislation and practice.

3. FATF RECOMMENDATIONS AND TRANSFER OF DIGITAL ASSETS

Taking into account the increasing prevalence of virtual assets as a means of payment, the FATF issued Recommendation 15, according to which countries should apply at the national level, when transferring digital assets, the same rules and measures that

are normally applied when identifying and assessing risks related to money laundering and financing terrorism. Based on that assessment, it is necessary to take adequate steps to mitigate the risk (FATF, 2023, Recommendation 15, points 1 and 2).[3] According to the aforementioned recommendation, providers of services related to digital assets should be licensed or registered according to the rule in the jurisdiction in which they are created. If the service provider is a natural person, it should be licensed or registered to provide the service at the level of the jurisdiction in which its place of business is located. According to the aforementioned recommendation, providers of services related to digital assets should be licensed or registered according to the rule in the jurisdiction in which they are created. If the service provider is a natural person, it should be licensed or registered to provide the service at the level of the jurisdiction in which its place of business is located. In order to prevent money laundering and terrorist financing, competent authorities at the national level should take necessary measures to prevent criminals or their associates from having management rights, being beneficial owners or having a significant or controlling role in the service provider related to digital assets. Therefore, at the national level, natural or legal persons who perform the activity of service providers related to digital assets should be identified, and that adequate sanctions are prescribed and applied for persons who perform these services without a license or registration (FATF, Recommendation 15, points 3 and 4). At the national level, it's necessary to provide adequate rules for the supervision and monitoring of the work of service providers related to digital assets, in order to reduce the risks of money laundering and terrorist financing associated with it (FATF, Recommendation 15, point 5).

According to the FATF recommendation regarding preventive measures aimed at preventing money laundering and terrorist financing, the so-called travel rules provided for in recommendation 16, also apply to bank transactions. In accordance with that rule, it is necessary at the national level to ensure that service providers related to digital assets obtain and store all necessary and accurate information about the principal and the user, as well as the transfer of virtual assets and make it available as relevant to the financial institution (without delay and in a safe way), as well as to competent authorities (criminal prosecution authorities). It is therefore necessary at the national level to enable service providers related to digital assets to obtain and store relevant information about both the originator of the transfer, and the user of the digital asset, and to provide, if necessary, that information at the request of competent authorities, as well as, if necessary, take measures to freeze and prohibit transactions with certain persons and entities (Recommendation 15, paras. 7 and 8).

Implementation of recommendations, especially the so-called travel rules, represented a major challenge for national jurisdictions. That is why the FATF produced a report on the implementation of recommendation 15 at the national level. According to the report, it seems that it is necessary to improve the understanding of the need to reduce the risk of money laundering and terrorist financing in the cryptocurrency market at the national

[3] FATF (2012-2023), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France. Available at: www.fatf-gafi.org/recommendations.html, (1. 7. 2023).

level, in order to determine the measures for their mitigation based on the assessment. The subject of the analysis, the results of which are presented in the report, was the implementation of recommendation 15 in 98 countries during 2022. Of the mentioned number, only 29 countries have adopted laws prescribing travel rules, while only a few (11 in total) actually apply them in practice. There is a need for improvement both in terms of recognizing the risk of money laundering and in terms of the implementation of preventive measures (FATF, Targeted Update on Implementation of the FATF Standards on Virtual Assets and Virtual Assets Service Providers, 2022: 2 and 10).[4]

According to the FATF Report, decentralized finance (DeFi) as well as unhosted wallets pose a risk of money laundering and terrorist financing. The risks of their use are increasing with the strengthening of preventive measures related to money laundering and financing of terrorism through digital assets. Therfore, in its Report, FATF proposes an adequate assessment of the risks related to the use of decentralized finance and unhosted wallets, the timely taking of measures to mitigate them and the mutual exchange of experiences of different jurisdictions with the global FATF network in order to specifically mitigate the risks of DeFi arrangements (FATF, Targeted Update on Implementation of the FATF Standards on Virtual Assets and Virtual Service Providers, 2 and 10).

However, lately the markets of decentralized finance have been on the rise, which was especially present at the end of 2022 and the beginning of 2023. An increasing number of users and an increase in trade through decentralized finance (DeFi) arrangements was noted in late 2022. However, several jurisdictions noted that DeFi arrangements still do not account for a large percentage of total activity related to digital asset transactions (*Ibid.,* 28).

In addition to the above, non-fungible tokens (NTFs) continue to pose a risk for money laundering and terrorist financing, although some jurisdictions, according to data from the FATF Report, have recorded a reduction in risk in this area after 2021. A problem in practice is the fact that NFTs may in some cases fall under the definition on virtual assets, while others may be considered works of art or collectors' items. Certain NFTs may appear as tokenized versions of physical goods, real estate or precious metals. Therefore, at the national level of all countries that are part of the Global FATF network, an approach should be taken that will allow the interpretation of whether a particular product or service can be qualified as a virtual asset or the provision of services related to virtual assets (FATF, Targeted Update on Implementation of the FATF Standards on Virtual Assets and Virtual Service Providers, 33). According to the data from the Report, the majority of jurisdictions that contain advanced regulations regarding the regulation of digital assets service providers and that have applied the "travel rule" include NFTs under the concept of virtual assets wherever possible (e.g. when used as a means of payment or as an investment vehicle) (*Ibid.*).

[4] FATF (2022), Targeted Update on Implementation of the FATF Standards on Virtual Assets/VASPs, FATF. Available at: www.fatf-gafi.org/publications/fatfrecommendations/documents/targeted-update-virtual-assets-vasps.html (1. 7. 2023).

4. PREVENTION OF ABUSE RELATED TO CRYPTO-ASSETS IN EUROPEAN UNION REGULATIONS

Due to the non-uniformity of regulations at the level of the EU in the field of trade in digital assets there was an opportunity for various abuses, taking into account the decentralization of the market and the quick and simple cross-border circulation of crypto-assets. Therefore, potential investors in the market were exposed to various risks. The aim of adopting the Proposal for a Regulation on markets in crypto-assets at the EU level was to unify regulations and overcome differences at the national level. Bearing in mind the uniqueness of the European capital market, one of the reasons for the adoption of the Regulation was to preserve its integrity by preserving the safety of consumers and investors.[5]

Special measures are foreseen in the area of prohibition of abuse of the crypto-assets market. However, they should be distinguished in relation to measures concerning the suppression of money laundering. Measures concerning the prohibition of market abuse apply to crypto-assets that are traded on a platform operated by an approved crypto-asset related service provider for which a request for determination to trade on that platform has been submitted (Art. 76). Just as when it comes to the conventional capital market, the Regulation prescribes a ban on trading on the basis of privileged information both for one's own account and for the account of third parties. In addition, a person who possesses privileged information about crypto-assets may not on the basis of that information, recommend that another person acquires or sells crypto-assets to which that information relates, nor encourage that person to such acquisition or sale, nor recommend on the basis of that privileged information for another person to cancel or change an order related to that crypto-assets or to encourage that person to cancel or change it (Art. 78). No one who possesses privileged information may disclose such information to another person, except if that information is published within the scope of ordinary work of professional obligations (Art. 79). However, the prohibition of the said behaviour is only related to the protection of the integrity of the capital market, but not to the prevention of other behaviors that constitute abuses related to crypto-assets.

The Regulation also prohibits manipulations in the crypto-asset market, which includes providing false or misleading information regarding the supply, demand or price of crypto-assets, determining or giving prices of one or more types of crypto-assets at an unusual or artificial level, entering into a transaction, issuing a trading order or undertaking some other activity or procedure that affects or is likely to affect the price of one or more types of individual cryptocurrency by applying a fictious procedure or other form of fraud, disseminating information through the media, including the Internet or other means that provide or could provide false or misleading information in connection with the supply, demand or price of a crypto-assets or hold or could hold the price of one or more types of individual crypto-assets at an unusual or

[5] About the Proposal for a Regulation on markets in crypto-assets at the EU see in: Novaković, S. M. 2021. The Reform of the Crypto Licenses System in Estonia and the Regulation on Markets in Crypto-Assets Proposal, *Strani pravni život*, 65(4), pp. 688-690.

artificial level, and when the person who disseminated the information knew or should have known that it was false or misleading. In addition to the above, manipulation in the crypto-assets market is also considered as securing a dominant position in the supply or demand of crypto-assets that has or is likely to have an impact in a direct or indirect way on the purchase or sale price and that creates or is likely to create other unfair trading conditions, as well as issuing orders to crypto-assets trading platforms, including their withdrawl or modification by all available means of trading, disrupting or delaying the functioning of the crypto-assets trading platform or activities likely to have that effect, making it difficult for other persons to recognize real orders on the crypto-assets trading platform or activities that is likely to have that effect, including giving orders that lead to destabilization of the normal functioning of the crypto-assets trading platform, creating a false or misleading signal about the supply or demand or price of crypto-asset, in particular by giving orders to start or worsen a trend or acitivities likely to have such an effect and taking advantage of occasional or regular access to traditional or electronic media by expressing an opinion on a crypto-assets, with a pre-existing view about that crypto-asset, as well as the subsequent realization of profit from the results of the opinion expressed about the price of the crypto-assets, without this conflict of interest being disclosed to the public in a proper and adequate manner (Art. 80). The said provision was intended to suppress the behaviour known as investment fraud. Due to the lack of regulation, the presence of such behaviour acted as a deterrent to potential investors in the crypto-assets market. Therefore, it is necessary to prohibit trade in crypto-assets based on privileged information, as well as manipulation on the crypto-asset market, at the national level, ensure regular supervision by competent authorities, and prescribe adequate sanctions for persons who do not comply with the assigned prohibitions.

In addition to the Regulation on the digital-assets market, the text of the Regulation on travel rules was also adopted at the EU level, which establishes obligations regarding information on persons participating in cryptocurrency transactions, monitoring of fund transfers in any currency, as well as information on publishers and users, and with the aim of prevention, detection and investigation of money laundering and financing of terrorism in which at least one payment, crypto-asset, service provider involved in the transfer of funds or crypto-assets is established on the territory of the EU (Art. 1).[6]

5. PREVENTION OF ABUSE IN CONNECTION WITH CRYPTO-ASSETS IN THE REGULATIONS OF THE REPUBLIC OF SERBIA

In 2020, the Republic of Serbia adopted the Law on Digital Assets (*Official Gazette of the Republic of Serbia* no. 153/2020). According to this law, for the first time at the national level, the issuance of digital-assets and secondary trading of digital assets in the Republic of Serbia, the provision of services related to digital assets, as well as the lien and fiduciary right on digital assets are regulated. By adopting the aforementioned law, an effort was

[6] Proposal for a Regulation on information accompanying transfers of funds and certain crypto-assets (recast), Brussels, COM(2021) 422 final. Available at: https://eur-lex.europa.eu/resource.html?uri=cellar:08cf467e-ead4-11eb-93a8-01aa75ed71a1.0001.02/DOC_1&format=PDF (21. 7. 2023).

made to prevent abuses on the cryptocurrency market, including money laundering and terrorist financing, as well as to strengthen the integrity of the capital market, as it is possible to issue financial instruments in digital assets. The law defines the concept of digital assets, under which both virtual currencies and digital tokens are classified (Art. 2, para. 1, pts. 2) and 3)). The aforementioned regulation contains provisions prohibiting trade in confidential information, as well as manipulations on the digital assets market, and sanctions are prescribed for persons who do not comply with the prescribed prohibitions. The same approach is in the recently adopted text of the Regulation of the European Union on the digital asset market.[7] However, its provisions do not define non-fungible tokens, DeFi, nor the rules regarding their use. The reason for such an approach is extremely rational, bearing in mind that the mentioned categories were developed only after its adoption. However, given the 2022 FATF Report on the Application of FATF Standards to digital assets and digital assets related Service Providers, it appears that the absence of control and oversight over the use of non-fungible tokens and DeFi may contribute to their abuse. Therefore, in the following period, it is necessary to legally define the mentioned categories and prescribe the way of control and supervision over their use.

The Law on digital assets does not contain provisions regarding the prevention of money laundering and terrorist financing, but contains a reference provision, according to which the provisions of the regulations governing the prevention of money laundering and terrorist financing, as well as regulations, are applied to providers of services related to digital assets which regulate the limitation of the disposal of assets in order to prevent terrorism and the proliferation of weapons of mass destruction (Art. 74). According to the provisions of the Law on Digital Assets, the provider of services related to digital assets is obliged to take actions and measures to prevent and detect money laundering and financing of terrorism according to the provisions of the law governing that area (Art. 75).

According to the provisions of the Law on Digital Assets, the National Bank of Serbia is competent for the adoption of by-laws and supervision over the performance of business and the realization of other rights and obligations related to virtual currencies as a type of digital assets, while the Securities Commission is competent for the adoption of by-laws and supervision over the performance of work and realization of other rights and obligations of the supervisory authority in the part that refers to digital tokens as a type of digital assets, as well as in the part that refers to digital assets that have the characteristics of financial instruments (Art. 10).

In order to enable the implementation of the provisions of the Law on Digital Assets and to prevent various types of abuses related to money laundering and terrorist financing, the National Bank of the Republic of Serbia and the Securities Commission adopted a large number of by-laws in 2021.

The National Bank of Serbia issued the Decision on the conditions and method of determining and verifying the identity of a natural person using means of electronic communication, which regulates the method of determining and verifying the identity of a

[7] Article 140 of the Law on Digital Assets prescribes the disclosure of insider information as a criminal offense, and Article 141 prohibits market manipulation.

person who is a natural person, a legal representative of that party, a party who is an entrepreneur, and a natural person who is a party's trustee, which is a legal entity; the Decision on the implementation of the provisions of the Law on Digital Assets related to the granting of a license for the provision of services related to virtual currencies and the consent of the National Bank of Serbia, the Decision on the closer conditions and the manner of supervision over the provider of services related to virtual currencies and the issuer and holder of virtual currencies; the Decision on the detailed conditions and method of granting and withdrawing consent for the provision of services related to virtual currencies in a foreign country, the Decision on the content and form of records kept by the provider of services related to virtual currencies held by funds, i.e. virtual currencies of users; the Decision on the content of the Register of Service Providers related to virtual currencies and closer to the conditions and manner of keeping that registry, as well as the Decision on the detailed conditions and manner of keeping the Record of holders of virtual currencies and the Decision on the content and form of the record kept by the provider of services related to virtual currencies held by funds, i.e. virtual currencies of users.[8]

The Securities Commission adopted a large number of by-laws in the previous period. When it comes to the prevention of abuses related to cryptocurrencies, the provisions of the Rulebook on Prevention of Abuses in the Digital Token Market are of importance, which more closely define the provisions of the Law on the Prohibition of Publishing Privileged Information and Method of Determination and Verification of the identity of a natural person using means of electronic communication. The Securities Commission also adopted the Rulebook on the content and form of records kept by the provider of services related to digital tokens that holds funds, i.e. digital tokens of the user, the Rulebook on the detailed conditions and method of granting and withdrawing consent for the provision of services related to digital tokens in a foreign country, the Rulebook on the implementation of the provisions of the Law on Digital Assets relating to the granting of a license for the provisions of services related to digital tokens and the consent of the Securities Commission.[9]

However, the adoption of the mentioned regulations in itself is not enough to prevent abuses. Therefore, it is also necessary to improve institutional capacities in order to realize the stated goal. In the coming period, it will be necessary to conduct training for responsible persons and employees of service providers related to digital assets, as well as for employees of supervisory bodies, but also for other institutitons of importance for the prevention of abuses related to digital assets. As for the improvement of legislation, it is necessary to consider the possibility of extending the application of special evidentiary actions prescribed by the Code of Criminal Procedure to criminal offences of disclosure of insider information and manipulation on the digital property market, bearing in mind possible problems that could arise in practice in connection with proving those criminal acts.[10]

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[8] All by-laws of the National Bank of Serbia are published in *The Official Gazette of the Republic of Serbia* no. 49/2021.

[9] All by-laws adopted by the Securities Commission are published in *The Official Gazette of the Republic of Serbia* no. 69/2021.

[10] Special evidentiary actions are foreseen in articles 161-187 of the Code of Criminal Procedure (*Official Gazette of the Republic of Serbia* no. 72/2011…35/2019, 27/2021 – Decision of the Constitutional Court and

In addition, it seems that confiscation of assets resulting from criminal acts representing abuse in the digital property market will aso be a challenge, so it is necessary to consider possible problems that may arise in practice in connection with that issue. The above mentioned issues should be discussed as much as possible, while the legislation should follow the development of practice in the area of the digital assets market and be continuously improved based on the analysis of experiences and the exchange of good practices with other countires.

Providers services related to digital assets face a number of challenges. Therefore, they are obliged to establish, maintain and improve reliable, efficient and complete systems of management and internal controls. Particularly important for the prevention of misuse is the obligation to establish an effective and efficient procedure for identifying, measuring and monitoring risks to which the provider of services related to digital assets could be exposed, especially the risks of money laundering and terrorist financing, as well as for management and reporting about them. In addition to the above, the obligation to establish accounting procedures and procedures for assessing compliance with regulations governing the prevention of money laundering and terrorist financing, as well as other relevant procedures, is of particular importance. Therefore, it is of particular importance that the establishment of such procedures is guided by the adoption of instructions or regulations by the supervisory authorities, in accordance with the provisions of the law (Art. 92 of the Law on Digital Assets).

6. CONCLUSION

In recent years, a great normative step has been taken towards the establishment of the legal framework necessary for the functioning and protection of the crypto-asset market. At the level of the European Union, the text of the Regulation on the digital asset market and the Regulation on "travel rules" which were established by the FATF in order to prevent money laundering and terrorist financing, were recently officially adopted. However, the Republic of Serbia already adopted the Law on Digital Assets in 2020. In this way, it is among the few countries that have regulated the functioning of the digital assets market at the national level. With its adoption, an effort was made to provide effective protection of the integrity of the mentioned market, as well as to prevent tax evasion in connection with certain transactions on the digital assets market, which are subject to taxation according to the current legislation. The national legislation of the Republic of Serbia is largely harmonized with international standards regarding the

62/2021 – Decision of the Constitutional Court. However, although the application of special evidentiary actions would be important for proving criminal acts prescribed by the Law on Digital Property, mentioned evidentiary actions can not be applied to those acts, but only to those provided for in Article 162 of the Code of Criminal Procedure. Therefore, the provision that prescribes to which criminal acts can be applied special evidentiary actions would be amended, so that they will include the new criminal acts prescribed in Arts. 140 and 141 of the Law on Digital Property. On the need to amend Article 162 of the Criminal Procedure Law, see in: Kostić, J. & Jelisavac Trošić, S. 2020. Inadequate Criminal Protection of the Capital Market in the Republic of Serbia. In: Duić, D. & Petrašević, T. (eds.), *EU 2020 – Lessons from the Past and Solution for the Future.* Osijek: Faculty of Law, Josip Juraj Strossmayer University of Osijek, pp. 589-620.

prevention of abuses related to digital assets. However, it is still too early to talk about the results of preventive measures, bearing in mind that the Law on Digital Assets has only been in force for two years.

Bearing in mind that it was adopted before the frequent trading of non-fungible tokens (NFTs), and the use od DeFi, the aforementioned categories are not defined by the Law, nor is the method of control and supervision over their use. Bearing in mind that according to the FATF report from 2022, they are suspectible to abuse due to the lack of supervision and control, in the coming period it will be necessary to define the way of supervision and control over the use and circulation of non-fungible tokens and the functioning of DeFi. Bearing in mind the inventiveness of persons who use the crypto-assets market for various types of abuse, it is necessary to continuously adapt legislation and practice to new circumstances both at the international and national levels. The exchange of experience and the best practice between different countries is of particular importance for undertaking various activities.

When it comes to the prevention of abuses related to crypto-assets, the institutional capacities on which the implementation of legal solutions will depend are also of particular importance. However, it seems that in the coming period, at the national level, training will be necessary for employees in competent courts and prosecutor's offices, as well as employees in digital assets service providers, as well as institutions in charge of supervision and control over their work. However, such training should be continuous and conducted depending on practical needs. That is why it is important that training plans are established at the level of various institutions, and above all at the national level, within the framework of various strategies, that must be attended by employees in order to prevent various abuses related to digital assets.

Although the law prescribes criminal acts that protect the integrity of the digital assets market - disclosure of insider information and manipulation on the capital market, it seems that in the coming period it will be necessary to amend the Code of Criminal Procedure, so that special evidentiary actions could be applied to the mentioned criminal acts which are as well prescribed by secondary criminal legislation, bearing in mind the fact that some forms of those acts can not be proven in any other way than by applying such measures.

The process of confiscation of digital assets will be a special challenge, bearing in mind the need for an urgent and quick reaction due to the possibility of great mobility of such assets. That is why we are sure that additional changes to the national legislation will certainly be conditioned by the needs of practice, and that the weaknesses of the existing solutions will only become apparent in the coming period. In order to monitor digital assets, it will certainly be necessary to hire people who have special knowledge and experience in certain areas.

Bearing in mind that service providers related to digital assets are obliged to assess the risks of money laundering and terrorist financing and take measures to reduce them, it is necessary to adopt guidelines or instructions at the national level by the competent authorities in charge of control and supervision of their work with the aim of a uniformed approach to risk assessment and undertaking adequate measures by all service

providers. However, it is necessary that the implementation of those activities by registered service providers be understood as an obligation and responsibility, and not only as the fulfilment of a formal condition. Therefore, it is necessary to present the consequences of failure to fulfil such an obligation and take adequate measures against irresponsible service providers in the case of abuses that are the result of their failure.

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