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STABLECOINS: LEGAL ISSUES AND LEGAL FRAMEWORK

Abstract

This study is devoted to the legal regulation of one of the types of cryptocurrencies – stablecoins. The article deals with issues of legal nature, essence, as well as relatively limited judicial practice in relation to stablecoins. Stablecoins are digital assets that are designed to maintain a stable value relative to some underlying asset or basket of assets, often through the use of algorithms and market mechanisms. The regulation of stablecoins can vary depending on the jurisdiction in which they are offered and used, as well as the specific features of the stablecoin in question. In general, stablecoins that are designed to function as a medium of exchange, store of value, or unit of account may be subject to financial regulatory requirements, such as anti-money laundering (AML) and know-your-customer (KYC) requirements, as well as licensing and reporting obligations. In the United States, for example, stablecoins that are classified as securities may be subject to regulation by the Securities and Exchange Commission (SEC), while stablecoins that are considered commodities may be subject to regulation by the Commodity Futures Trading Commission (CFTC). Additionally, some stablecoins may be considered to be a type of "money service business" and subject to regulation by the Financial Crimes Enforcement Network (FinCEN) [1]. In the European Union, stablecoins may be subject to regulation under the EU's revised Payment Services Directive (PSD2) and the forthcoming Digital Finance Strategy [2]. It is important to note that the regulatory landscape for stablecoins is rapidly evolving, and the specific requirements that apply to a particular stablecoin may depend on a number of factors, including the structure of the stablecoin, the specific legal jurisdiction(s) in which it is offered, and the manner in which it is used. As such, the different approach of countries in the regulation of stablecoins has created the need to study this issue from a legal point of view.

Key words: stablecoins, virtual asset, digital tenge, legal essence.

Introduction

Last time, there has been such a practice that more and more people on the planet are pouring their money into the purchase of cryptocurrencies and this process can be referred to as "personal investments". It is worth recognizing that the cryptocurrency market is developing rapidly. And often people don't care about their high volatility and associated risks. A considerable number of legal scholars have considered the risks, disadvantages and prospects of both legal and economic regulation. However, about the legal essence of the type of cryptocurrency – there are no stablecoins yet. For the most part, this problem is the interest of scientists in the economic sphere. But, it is worth recalling

that without a competent legal pool, the further development of the cryptocurrency is fraught with negative consequences.

Materials and methods

The methodology of this study consists mainly of a legal and sociological approach to the study of foreign legislation and a review of the literature in this study. Scientific articles, opinions, latest news, blog entries and other materials were also analyzed for better research. The doctrinal aspect was also considered, using the proposed regulation as a guideline for comparing opinions and expected consequences. It is worth noting that crypto assets have appeared quite recently and therefore the available academic literature is relatively limited.

Main provisions

The problem of studying this topic is the insufficient level of the legal framework for optimal and effective regulation of not only stablecoins but also other related types of cryptocurrencies. As a proposal, it was proposed to define the classification of the crypto asset market in such a way as to distinguish stablecoins from digital currencies of central banks. Introduce the concepts of "stablecoin", "digital currencies of central banks" into the legislation of countries that already directly regulate the digital asset market so that it does not cause confusion for society.

Literature review

During the analysis of the topic, many works were considered on the types of virtual assets – stablecoins and the most significant among them are the works of Lyons, Richard K.A., Kun Duan A, Andrew Urquhart, Kochergin D.A., Ivanov V.V., Nurmukhametov R.K., Yanishin K.R., Gatsenko I.O., Mast A.I. Most of these works were devoted specifically to the economic and financial essences of stablecoins. These articles explain exactly why the stablecoin is stable in relation to other types of cryptocurrencies, what are the risks and also an inalienable and inherent sign of the volatility of stablecoins. In general, these studies formed the main basis for discussing the stablecoin market from a legal point of view.

Results and discussion

Stablecoin is a special kind of cryptocurrency. In other words, a stablecoin is a stable coin (from the English word "Stablecoin"). Its stability is determined by its real binding to a fiat currency (for example, dollar, euro or yuan) or an asset. Some authors believe that stablecoins are a tool to eliminate the volatility of cryptocurrencies [3, p. 1]. One of the striking examples of stable coins or tokens is the well-known cryptocurrency USDT (Tether), which has an equivalence in the coefficient of 1:1, thus, 1 USDT is equal to 1 US dollar.

Tether (USDT) is a cryptocurrency that is pegged to the value of the US dollar. Its legal nature is a complex issue and can vary depending on the jurisdiction in which it is used.

In general, the legal status of USDT is not well-defined, and it operates in a gray area in many countries. The lack of clear regulation makes it difficult to determine the exact nature of USDT and how it should be treated under the law. Some countries have taken a more permissive approach to cryptocurrencies and have allowed USDT to be used freely, while others have placed restrictions on its use.

It's worth noting that Tether Limited, the company that issues USDT, has claimed that each unit of USDT is backed by a corresponding US dollar held in reserve. However, there has been controversy over the lack of audits and transparency of the company's reserves, and some experts have called into question the company's claims of full dollar-for-dollar backing.

In conclusion, the legal nature of USDT is still uncertain and can vary depending on the jurisdiction. It's important for individuals and businesses to be aware of the regulations in their own country and the potential risks involved with using USDT.

The acquisition of this kind of virtual currencies is explained by the fact that most people believe that this is a reliable way to save their funds in such a turbulent and unstable economic situation. This is similar to the procedure of a bank deposit, only without the intention to receive any income in the form of interest from a bank deposit. However, it is impossible to call stablecoins, as happens with Bitcoin, an investment tool. As already mentioned, it plays more the role of a reliable repository. Although the issue of reliability also remains open and debatable, because it is difficult to state whether 1 US dollar is actually stored on a Tether bank account for one unit of USDT. In order to somehow understand this issue, it is necessary to plunge into the history of the creation and development of the Tether company itself.

So it is also necessary to consider the pilot project of the National Bank "Digital Tenge". It is known that the fiat currency itself has 2 forms of expression: cash and non-cash, the latter include the so-called "electronic money". Recently, in many countries, the same third form of expression of fiat currencies has appeared, this is the "digital tenge", "digital ruble", etc. In the case of "digital tenge", only the National Bank will be the issuer. The Bank and in circulation it will equally be used as a legal tender. The difference between "digital tenge" and electronic money that are in bank accounts is that the first ones will be issued in the form of a unique digital sequence (tokens) or electronic records stored on special electronic wallets, in a word through blockchain technology or DLT, which is typical for cryptocurrencies. However, it is impossible to attribute "digital tenge" to secured digital assets, since the definition of a "digital asset" established in paragraph 55-1) of Article 1 of the Law on Informatization states that a digital asset is not a financial instrument [4]. Based on the above, we can conclude that the "digital tenge" is not a stablecoin, much less a kind of cryptocurrency. After all, the latter do not have a centralized single issuer, as happens in the case of digital tenge, the guarantee of which is provided by the National Bank of the Republic of Kazakhstan.

In general, stablecoins can be classified as either.

Commodity-backed stablecoins: these are stablecoins backed by physical assets, such as precious metals or commodities, and they may be considered as a type of security or commodity.

Fiat-collateralized stablecoins: these are stablecoins backed by fiat currencies, such as the US dollar, held in reserve by the issuer, and they may be considered as a type of electronic money or payment instrument.

Algorithmically-controlled stablecoins: these are stablecoins where the value is maintained through a combination of smart contracts and algorithms, without being backed by any physical asset. These stablecoins may be considered as a new type of asset class and their legal classification may depend on the specific design and features of the stablecoin [5, p. 73].

In some jurisdictions, stablecoins may also fall under the scope of securities or investment regulations, depending on the structure of the stablecoin and how it is marketed and sold to investors.

Let's analyze, also a relatively new abbreviation in the field of digital assets is CBDC. Central bank digital currencies (CBDCs) are a relatively new concept, and there is no globally accepted legal framework for their regulation. However, several countries have started exploring the potential for CBDCs and are in the process of developing their own regulatory frameworks.

In general, CBDCs fall under the jurisdiction of central banks, which are responsible for ensuring the stability of the monetary and financial systems. However, the specific legal framework for CBDCs can vary from country to country, depending on the government's goals and priorities.

About relatively judicial practice, for example, the People's Court of the Chaoyang District of Beijing ruled that stable coins such as USDT cannot be used to pay wages, the local Beijing Daily news agency reported on Wednesday. (Beijing's Chaoyang District People's Court has ruled that stablecoins like USDT cannot be used for salary payments, the local news agency Beijing Daily reported on Wednesday.) [6].

A Chinese court has stated that virtual currencies such as USDT cannot circulate in the market as a currency, requiring all employers to pay their employees only in the official currency, yuan (RMB).

The decision was made as part of a court case in which an employee of a local blockchain firm sued the employer for not agreeing to pay him a salary in yuan. The plaintiff claimed that instead of paying him in yuan, the firm paid him salary and bonuses in regular USDT coin.

Referring to China's total ban on cryptocurrency, which came into force in September 2021, the court pointed out that digital currencies such as USDT do not have the same legal status as a legitimate payment instrument. The court noted that the plaintiff's petition for payment of wages and bonuses in yuan fully complies with local legislation and is supported by the court.

Within the framework of the European Union, there is no harmonized approach to the regulation of crypto assets in general and stablecoins in particular. A number of researchers believe that the legal basis that can be applied to a certain type of stablecoins, namely, stablecoins backed by fiat currencies, is the regulation regime of electronic money [6]. The legal regime regarding electronic money was established by the European Parliament and the Council in the Second Electronic Money Directive (Second Electronic Money Directive — EMD 2). The Directive defines electronic money as “an electronically (including magnetically) stored monetary value represented by a claim against the issuer, which is issued upon receipt of funds by the issuer for making payments and is accepted as a means of payment by institutions other than the issuer of electronic money” [7, p. 10].

In particular, electronic money is widely regarded as a digital alternative to cash, which is why the key purpose of their issuance and use is to make current payments. It is for this purpose that they are issued as interest-free obligations of the issuer. Electronic money does not represent any tangible asset, but is the electronic equivalent of a fiat currency of the corresponding value. On the contrary, most stablecoins are provided with underlying assets, so their primary function is the function of a means of saving, while the functions of a means of exchange and/or payment are already derivative functions [8, p. 150].

We would also like to consider another so-called stablecoin, which, so to speak, does exist outside of any legal field.

Libra is a proposed digital currency and financial infrastructure created by Facebook, which was announced in June 2019. The project is governed by the Geneva-based Libra Association, which includes a consortium of companies, organizations, and academic institutions from around the world.

The legal framework for Libra is still being developed and is subject to change. However, the Libra Association has stated that it intends to comply with all applicable laws and regulations, including those related to anti-money laundering, counterterrorism financing, data protection, and consumer protection. The Association has also said that it will work with regulators to ensure that the project is in line with their expectations and to secure any necessary licenses and approvals.

It's worth noting that the development and launch of Libra have been met with significant regulatory scrutiny and pushback from governments and central banks around the world, who have raised concerns about its potential impact on financial stability, privacy, and the global monetary system. As a result, the timeline for the launch of Libra remains uncertain, and its future will depend on the outcome of ongoing discussions with regulators and other stakeholders.

Without disclosing the economic essence of stablecoins, it seems impossible to understand and disclose the legal nature. Therefore, most economists have devoted their research to the question: What makes stable coins stable?

For example, Kuan Duan and Andrew Urquhart investigated the stability of stablecoins by testing the stationarity of the differentiated series of the target stablecoin price and the \$1 mark using fractional time series analysis. But they still believe that even those most popular coins do not always hold a 1:1 ratio, and most often show clear deviations from their pegged value of 1 dollar. According to the results of their research, the authors of the most stable coins designated the DAI stablecoin, explaining that DAI maintains its value not by providing US dollars stored by the company, but by using secured debt denominated in ether (ETH), the Ethereum cryptocurrency. DAI is decentralized, which means that no centralized organization controls the supply of new DAI in circulation. The Maker protocol, using smart contracts powered by Ethereum, allows borrowers to block ETH and other crypto assets, providing them in such a way as to generate new DAI tokens in the form of loans [9, p. 3].

Lyons, Richard K.A. believe that the issuance of stablecoins, the closest analogue of central bank intervention, plays only a limited role in stabilization, pointing instead to stabilizing forces on the demand side [10, p. 131].

Conclusion

Studying the practice of foreign countries, we can safely say that the legal framework governing the stablecoin is diverse. China's position is unclear in this regard, since the country issues its CBDC "digital yuan", but categorically prohibits other types of stablecoins, so the judicial practice studied in this article proved this. Although it is possible to say that CBDC and other stablecoins are identical. Rather not, because the interests of the CBDC are lobbied directly by the state itself in the behalf of Central Banks. And stablecoins like USDT are put forward by individuals, as for example the company Tether does. The state is responsible for the volatility, issue, issue and liquidation of CBDC. Many people believe that CBDC is the same electronic money, or its kind. However, this concept is considered erroneous, it is rather a kind of symbiosis between digitized fiat currency and cryptocurrencies, since the latter is formed on the basis of blockchain technology, CBDC development is similar to the latter. And another convenience of CBDC is that they can be used as a legitimate means of payment and will be stored on the wallet, and most importantly, it will be possible to pay offline, without a connection to the global network.

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СТЕЙБЛКОИНЫ: ПРАВОВЫЕ ВОПРОСЫ И ПРАВОВАЯ БАЗА

Аннотация

Данное исследование посвящено правовому регулированию одного из видов криптовалюты – стейблкоинов. В статье рассмотрены вопросы правовой природы, сущности, также относительно ограниченной судебной практики в отношении стейблкоинов. Стейблкоины – это цифровые активы, которые предназначены для поддержания стабильной стоимости относительно некоторого базового актива или корзины активов, часто с помощью алгоритмов и рыночных механизмов. Регулирование стабильных монет может варьироваться в зависимости от юрисдикции, в которой они предлагаются и используются, а также от специфических особенностей рассматриваемой стабильной монеты. В целом, стабильные монеты, предназначенные для функционирования в качестве средства обмена, хранилища стоимости или расчетной единицы, могут подпадать под требования финансового регулирования, такие как требования по борьбе с отмыванием денег (AML) и "знай своего клиента" (KYC), а также обязательства по лицензированию и отчетности. В Соединенных Штатах, например, стабильные монеты, которые классифицируются как ценные бумаги, могут регулироваться Комиссией по ценным бумагам и биржам (SEC), в то время как стабильные монеты, которые считаются товарами, могут регулироваться Комиссией по торговле товарными фьючерсами (CFTC). Кроме того, некоторые стейблкоины могут рассматриваться как разновидность «бизнеса по обслуживанию денежных средств» и подпадать под регулирование Сети по борьбе с финансовыми преступлениями (FinCEN)[1]. В Европейском союзе стабильные монеты могут подпадать под регулирование в соответствии с пересмотренной Директивой ЕС о платежных услугах (PSD2) и предстоящей стратегией цифрового финансирования [2]. Важно отметить, что нормативно-правовая база для стабильных монет быстро развивается, и конкретные требования, которые применяются к конкретной стабильной монете, могут зависеть от ряда факторов, включая структуру стабильной монеты, конкретную правовую юрисдикцию (юрисдикции). Таким образом, разный подход стран в регулировании стейблкоинов породило необходимость изучения этого вопроса с правовой точки зрения.

Ключевые слова: стейблкоины, виртуальный актив, цифровой тенге, правовая сущность.

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СТЕЙБЛКОИНДАР: ҚҰҚЫҚТЫҚ МӘСЕЛЕЛЕР ЖӘНЕ ҚҰҚЫҚТЫҚ БАЗА

Аңдатпа

Бұл зерттеу криптовалютаның бір түрін-стейблкоиндерді құқықтық реттеуге арналған. Мақалада құқықтық табиғат, мәні, сондай-ақ стаблкоиндерге қатысты салыстырмалы түрде шектеулі сот практикасы қарастырылады. Стейблкоиндар – бұл цифрлық активтер, олар көбінесе алгоритмдер мен нарықтық механизмдер арқылы кейбір негізгі активтерге немесе активтер қоржынына қатысты тұрақты құнды сақтауға арналған. Тұрақты монеталарды реттеу олар ұсынылатын және қолданылатын юрисдикцияға, сондай-ақ қарастырылып отырған тұрақты монетаның ерекшеліктеріне байланысты өзгеруі мүмкін. Жалпы алғанда, айырбастау құралы, құндылық сақтаушысы немесе есеп айырысу бірлігі ретінде жұмыс істеуге арналған тұрақты монеталар ақшаны жылыстатуға қарсы талаптар (AML) және «өз клиентіңізді біліңіз» (KYC) сияқты қаржылық реттеу талаптарына, сондай-ақ лицензиялау және есеп беру міндеттемелеріне сәйкес келуі мүмкін. Мысалы, Америка Құрама Штаттарында бағалы қағаздар ретінде жіктелген тұрақты монеталарды бағалы қағаздар және биржалар жөніндегі комиссия (SEC) реттей алады, ал тауарлар болып саналатын тұрақты монеталарды тауар фьючерстерінің сауда комиссиясы (CFTC) реттей алады. Сонымен қатар, кейбір стаблкоиндер «ақшалай қызмет көрсету бизнесінің» бір түрі ретінде қарастырылуы мүмкін және қаржылық қылмыс желісінің (FinCEN) реттеуіне жатады [1]. Еуропалық Одақта тұрақты монеталар ЕО-ның қайта қаралған төлем қызметтері туралы директивасына (PSD2) және алдағы цифрлық қаржыландыру стратегиясына сәйкес реттелуі мүмкін [2]. Тұрақты монеталардың нормативтік-құқықтық базасы тез дамып келе жатқанын және белгілі бір тұрақты монетаға қойылатын нақты талаптар бірқатар факторларға, соның ішінде тұрақты монетаның құрылымына, ол ұсынылатын нақты құқықтық юрисдикцияға (юрисдикцияға) және оның әдісіне байланысты болуы мүмкін екенін ескеру маңызды. Осылайша, стейблкоиндерді реттеудегі елдердің әртүрлі тәсілдері бұл мәселені құқықтық тұрғыдан зерттеу қажеттілігін тудырды.

Түйін сөздер: стейблкоиндер, виртуалды актив, цифрлық теңге, құқықтық мән.