

# К ПРОБЛЕМЕ ГРАЖДАНСКО-ПРАВОВОГО ПОНИМАНИЯ КРИПТОВАЛЮТЫ: ДЕФИНИЦИЯ И КВАЛИФИЦИРУЮЩИЕ ПРИЗНАКИ

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DOI: 10.22394/2070-8378-2022-24-1-60-62

**Аннотация:** Статья посвящена исследованию экономико-правовой природы криптовалюты, рассматриваемой в качестве объекта гражданских прав. Анализируются актуальные проблемы гражданско-правового механизма исполнения обязательств в сфере оборота цифровых прав. Раскрывается система квалифицирующих признаков криптовалюты. С целью уточнения и интеграции доктринальных, законодательных и правоприменительных подходов предложена авторская дефиниция криптовалюты, основанная на ее квалифицирующих признаках. Автор определяет криптовалюту как оборотоспособную в пределах данной конкретной цифровой системы, делимую, движимую, сложную вещь, которая одновременно характеризуется материальными признаками денег, валютных ценностей и информации, а также юридически значимыми качествами имущественных, цифровых и интеллектуальных прав и нематериальных благ (деловой репутации). Сегодня на передний план необходимо выдвигать проблему отсутствия теоретических, законодательных и правоприменительных подходов к понятию криптовалюты и систематизации ее квалифицирующих признаков. Легальное определение криптовалюты послужит методологической базой для эффективного правового регулирования отношений не только на специализированном рынке цифровых финансовых инструментов, но и отношений в динамично развивающейся сфере оборота цифровых прав, которая дает мощный импульс для экономического роста и служит институциональной основой для цифровой экономики и государства.

**Ключевые слова:** объекты гражданских прав, криптовалюта, имущественные права, цифровые права, деньги, валютные ценности, деловая репутация, интеллектуальные права, информация

**Дата** поступления статьи в редакцию: 19 декабря 2019 года.

## TO THE PROBLEM OF THE CIVIL-LEGAL CONCEPT OF CRYPTOCURRENCY: ITS DEFINITION AND QUALIFYING FEATURES

BRIEF COMMUNICATION

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**Abstract:** The article examines the economic and legal nature of cryptocurrency as an object of civil rights. The article analyzes the current problems of the civil law mechanism for fulfilling obligations in the sphere of digital rights turnover. The system of characteristic features of the cryptocurrency is revealed. To clarify and integrate doctrinal, legislative and law enforcement approaches, the author proposes a definition of cryptocurrency based on its qualifying features. The author defines cryptocurrency as a transferable complex thing within a given specific digital system, which is characterized by both material signs of money, currency values and information, and legally significant qualities of the property, digital and intellectual rights, and intangible benefits (business reputation). Currently, it is necessary to solve the problem with the lack of theoretical, legislative, and law enforcement approach to the concept of cryptocurrency and the systematization of its qualifying features. The legal definition of cryptocurrency will serve as a methodological basis for the effective legal regulation of relations both in the specialized market of digital financial instruments and relations in the rapidly developing sphere of digital rights, which is necessary for economic growth and serves as an institutional basis for the digital economy and the state.

**Keywords:** objects of civil rights, cryptocurrency, property rights, digital rights, money, currency values, business reputation, intellectual rights, information

**Received:** December 19, 2019.

## Introduction

Modern digital technologies are leading to a radical change in the system of trade, the financial sphere, relations between sellers and buyers. In the longer term, they will affect the mechanism for the formation of money supply (capital) in free circulation and the structure of risks arising from the interaction of market participants, goods, funds, and rights related to digital transactions. All these factors and prospects are confirmed by the systematically emerging judicial practice on economic disputes concerning transactions with cryptocurrency<sup>1</sup>.

Digital technologies are rapidly changing the world, forcing humanity to rethink the socio-economic paradigm of civilization on a global scale. Such changes will inevitably cause a restructuring of all legal relations, which are connected not only with contracts and other transactions but also with the implementation and protection of civil rights in general.

The main point of the transformation of the law of obligations, concerning, also, digital rights, is a qualitatively new model of the civil law mechanism for fulfilling obligations in the field of cryptocurrency (digital money) circulation.

## Conceptual economic and legal approaches to the problem of cryptocurrency turnover

According to Art. 141.1 of the Civil Code of the Russian Federation, digital rights are the obligations and other rights named as such in law whose content and terms of exercising of which are defined in compliance with the rules of an information system that meets the features established by law. The exercise, disposal of a digital right, in particular the transfer, putting in pledge, encumbrance of a digital right in other ways, or the restriction for the disposal of a digital right, are only possible in an information system without addressing the third party. Unless otherwise provided for by law, the holder of a digital right shall be deemed the person that in compliance with the rules of an information system has the possibility to dispose of this right. At the same time, in the cases provided for by law, another person may be recognized as the owner of the digital right. It is emphasized that the transfer of a digital right based on a deal shall not require the consent of the person liable in respect of this digital right.

One of the main methodological problems of civil law regulation regarding the circulation of digital rights is the establishment of the role of cryptocurrency in the system of objects of civil rights and the legal definition of its concept.

In a broad sense, a cryptocurrency<sup>2</sup> is understood as a given specific number of bits of information recorded in digital form, which can serve as a subject of exchange, a monetary unit of account, and (or) a means of accumulation.

Cryptocurrency proponents see it as a solution to the long-standing problem of “double spending”, which has always led to the need for a central public authority that would monitor the conclusion of valid transactions and their actual execution. The need for a reliable intermediary is still supported, for example, in the form of a bank or other financial institution, which would perform the role of a “controller” of

transactions and other types of business activity among participants of such operations [Andryushin, 2019. P. 250].

Business experts have already said that in some cases, cryptocurrency can completely replace or act as an alternative to national currencies when performing financial transactions and alienating real estate and other property. In their opinion, this can increase the economic security of civil turnover and provide maximum guarantees for the observance of the rights and legitimate interests of owners and third parties, including the state and other public institutions.

Other experts believe that all this is just “hype” and technological fraud, and the interest in cryptocurrency is excessively exaggerated. Some authors argue that the increased attention to cryptocurrency is similar to the “tulip mania” of the 17th century. In their opinion, virtual currency does not perform any socially useful function and can be used to circumvent the law or for other illegal purposes (Art. 10 of the Civil Code of the Russian Federation). As legal practice has shown, people who want to circumvent the law are often among the first to use innovations to commit fraudulent actions. This is the reason for the introduction of legal prohibitions and restrictions on the use of cryptocurrencies in national economies, which is already applicable in the practice of state regulators in some countries [Maksurov, 2018. P. 90].

## Definition of cryptocurrency and the system of its qualifying features

Referring to legislative provisions, current financial market practices, and law enforcement interpretations, we can formulate the definition of cryptocurrency.

In our opinion, cryptocurrency is a transferable complex thing within a given specific digital system, which is characterized by both material signs of money, currency values and information, and legally significant qualities of the property, digital and intellectual rights, and intangible benefits.

Along with the system of other qualifying features [Eremenko, 2011. P. 64–73], in our definition, cryptocurrency is considered a complex thing.

According to Art. 134 of the Civil Code of the Russian Federation, a complex thing is understood as a specially organized (constructed) combination of different things involving their use for a common purpose. Transaction concluded in respect of the complex thing extends to all the things being the components thereof, except as otherwise are envisaged by the terms of the transaction.

Cryptocurrency combines such objects of civil rights as property rights (Art. 128 of the Civil Code of the Russian Federation), digital rights (Art. 141.1 of the Civil Code of the Russian Federation), intellectual rights (Art. 1226 of the Civil Code of the Russian Federation) and intangible benefits – business reputation (Art. 150, 152 of the Civil Code of the Russian Federation).

To clarify our definition, it is necessary to name other qualifying characteristics of cryptocurrency.

Digital rights are obligations and other rights specially recognized as such, the content and conditions for the exercise of which are determined by the rules of an information system that meets the features established by law, which, for example, administers this particular cryptocurrency using information and digital technologies.

Intellectual property rights are considered to be a set of intellectual property rights. According to Art. 1226 of the Civil Code of the Russian Federation, intellectual rights include an exclusive right, which is a property right, and in cases provided for by law, also

1 <https://www.cftc.gov/sites/default/files/2018-08/enfdropmarketsmemorandum082318.pdf>

2 <https://www.forbes.com/forbes/2011/0509/technology-psilocybin-bitcoins-gavin-andresen-crypto-currency.html#7532fac1353e>

## ЦИФРОВАЯ ЭПОХА

personal non-property and other rights (the right of succession, the right of access, etc.). The results of intellectual activity and equated means of individualization of legal entities, goods, works, services, and enterprises, which are granted legal protection, include, in particular, computer programs, databases, know-how, integrated circuit layout-designs (topography) (subparagraphs 2, 3, 11, 12, clause 1 of Art. 1225 of the Civil Code of the Russian Federation) and which, as objects of intellectual property, can be connected with other property as part of cryptocurrency.

Cryptocurrency contributes to the formation of legally significant characteristics related to intangible goods such as business reputation. In scientific literature, business reputation is described as an intangible benefit of subjects or objects of civil rights, consisting of a public assessment of business qualities in any area of professional activity [Parygina, 2017. P. 29]. To clarify certain things, we should supplement this definition with the following: a business reputation should be understood as the type of intangible goods belonging to a subject (object) and which is an expression of a socially significant positive assessment of a person's business and other legally significant qualities performed in any area of economic activity.

As mentioned above, cryptocurrency has the material properties of money, currency values (Art. 141, 142 of the Civil Code of the Russian Federation), and information.

Money is the national currency of the Russian Federation, which has the name "ruble" and is a legal tender that must be accepted at face value throughout the state (Art. 140 of the Civil Code of the Russian Federation). Currency values are defined as foreign currency and foreign securities (clause 1 of Art. 2 of Federal Law No. 173-FZ of 10.12.2003 "On Currency Regulation and Currency Control"). Cryptocurrency possesses the economic properties of money and currency

values, having the status of an accounting unit, medium of exchange, means of payment, and means of accumulation.

By its technological nature, cryptocurrency is a certain amount of information that has legal, financial, and economic significance, expressed in bits and bytes. Information is knowledge (messages, data), regardless of the form of their presentation, while information technologies are interpreted as processes, methods of search, collection, storage, processing, supply, distribution of information, and methods for carrying out these processes and methods, an information system is the aggregate of the information included in the database and information technologies and technical devices ensuring processing thereof (clauses 1, 2, 3, paragraph 1 of the Federal Law of 27.07.2006 No. 149-FZ "On information, information technologies and information protection"). According to this aspect, cryptocurrency has the properties of information produced and exchanged through information technology within the information system.

### Conclusion

Currently, the legal community should take into account the increasing importance of cryptocurrency as a socio-economic entity and outline principles for its legal regulation and resolution of judicial disputes arising from its turnover.

It is necessary to solve the problem with the lack of theoretical, legislative, and law enforcement approach to the concept of cryptocurrency and the systematization of its qualifying features. The legal definition of cryptocurrency will serve as a methodological basis for the effective legal regulation of relations both in the specialized market of digital financial instruments and relations in the rapidly developing sphere of digital rights, which is necessary for economic growth and serves as an institutional basis for the digital economy and the state.

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**Ссылка для цитирования:** Концевой А.В. К проблеме гражданско-правового понимания криптовалюты: дефиниция и квалифицирующие признаки. *Государственная служба*. 2022. № 1. С. 60–62.

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**For citation:** Kontsevoy A.V. To the problem of the civil-legal concept of cryptocurrency: its definition and qualifying features. *Gosudarstvennaya sluzhba*. 2022. No. 1. P. 60–62.