

## SLCMC 2021

International conference «State and law in the context of modern challenges»

**ALTERNATIVE CURRENCY CIRCULATION IN DIGITAL  
ECONOMY EPOCH: LEGAL REGULATION CHALLENGES**

Natalia V. Sirik (a), Elena V. Kuznetsova (b)\*

\*Corresponding author

(a) Smolensk Branch of Saratov State Law Academy, 3, Udarnikov St., Smolensk, Russia, nsirik@yandex.ru,

(b) Smolensk Branch of Saratov State Law Academy, 3, Udarnikov St., Smolensk, Russia,  
kuznetsova0204@gmail.com**Abstract**

This article analyzes the legal status of electronic money in Russia. It describes current legal framework for its circulation, and further ways to develop and form new regulatory environment. An overview of trends in the market of financial services is given. The legal regime of e-money in foreign countries is analyzed. Different approaches to the definition of money surrogates are shown, and the advantages and disadvantages of their use in accounting are revealed. The article examines the concept of cryptocurrency and its relationship to the category of "electronic money". The authors have come to the conclusion that Russian legislation still does not enshrine the legal concept of "cryptocurrency", "virtual currency", despite the fact virtual money is quite commonly used in our country. Home legislators, albeit slightly, have come closer to solving this problem by introducing the concept of "digital money" and "digital rights" in Federal Law No. 259 (2020). However, despite its innovation this legal norm hardly solves the problem of legal regulation of alternative currency circulation forms. The authors determine feasibility as well as the need to develop a new system of legislation, current changes in accounting and monetary circulation in general being considered. They emphasize that such a legislation shall define the essence and legal status of electronic money. Legal gaps in using cryptocurrency as a circulating medium significantly hamper the process of economy digitalization as a whole, judicial protection of the parties being limited.

2357-1330 © 2022 Published by European Publisher.

*Keywords:* Cryptocurrency, digital assets, evidence, monetary surrogates, transaction history

## 1. Introduction

As traditional forms of money develop and change, substitute currencies are being introduced concurrently into the economy to facilitate monetary transfers between businesses and individuals. Alternative currency circulation implies currency issue and use of other types of money as a tool to fulfil payment obligations, which may be sanctioned by public authorities or not, although the legal status is fixed by law. At the same time, alternative monetary circulation can have both a cash and non-cash form (Vaipan, 2017). In fact, cash surrogates replace real money in settlements between economic actors, to pay for supply contract performance, work execution, or rendering some services. In this regard, there may arise necessity for the participants having binding relations and using digital currency to have their interests protected in court. Moreover, the issue of the legal regime of digital assets may arise in bankruptcy cases, which certainly affects procedural evidentiary procedure. Thus, the issues of alternative forms of money circulation and, accordingly, those of legal settlement relations give rise to the need to update the relevant regulatory framework.

## 2. Problem Statement

Today, alternative or parallel money circulation potentially could help to develop payment system, reduce traditional money circulation costs, although some legal regulation challenges inevitably arise and, therefore, regulatory framework shall be improved, because these issues are hardly considered at the moment. Foreign practice of parallel or alternative payment forms being used in the monetary system demonstrates both positive and negative experience. For example, in the post-war period of the early twentieth century, Germany faced the instability of the national monetary system, and the first attempts were made to introduce into circulation alternative currencies Notgeld (from German "der Not" – need and "das Geld" – money), which in the state of emergency, when the country was being restored, had the same payment power along with the official currency Deutschemarks. Alternative monetary circulation in this period was aimed at reducing the rate of inflation, which in 1914 in Germany reached catastrophic proportions. Subsequently, positive experience of implementing alternative currencies was used in Germany as early as the period between 1935 and 1948 only.

Modern experience of using such types of monetary surrogates in cash transactions also has practical application. For example, in 2012, the so-called "Bristol pound" was introduced in the UK, which introduction resulted from the needs of national economy development, creation of additional jobs, as well as countering principal outflow from Bristol.

The Russian Federation, along with the leading countries (e.g. the USA, UK, etc.), as well as the Republic of Belarus, Ukraine, Israel or Turkey has used an alternative payment system since the 2010s, when there appeared PayPal, one of the largest debit payment systems in the world, aimed at electronic settlements when some goods are purchased or money is transferred.

There are currently about 120 regional and local alternative currencies in global monetary circulation, of which more than a hundred are in circulation in European countries. Therefore, we can conclude that the main purpose of alternative currencies is to protect the interests of the national economy and weaken the influence of generally recognized international currencies, such as the US dollar.

However, the introduction of alternative currencies into the billing system requires compliance with their legitimization by law as well as the formation of a transparent and clear system of legal regulation of their circulation, which is currently in its active formation stage.

It should be noted that according to current laws, the use of some cash surrogates as a payment form requires a rather complicated procedure of legitimization. That involves addressing the issuer, registration, application filing, identification and participation confirmation, etc., which reduces their value as a payment means compared, for example, with well-known monetary surrogates such as travelers cheques (Dostov & Shust, 2013).

### **3. Research Questions**

The subject of this research is the legal category of "monetary surrogate", which is the counterpart of alternative currency circulation. On the one hand, such a payment form represents a peculiar and controversial phenomenon in modern financial market; on the other hand, it is a kind of a global system that is advanced at an astounding pace every day. However, in the Russian Federation, the process of launching e-money and recognizing its legal status is currently at its initial stage. At the same time, the initial phase of e-money legal recognition process triggers further elaboration of the relevant legal provisions that federal laws of the Russian Federation include.

The paper also examines specific standards of proof in cases involving the use of digital assets, in particular, proving the fact that some digital assets belong to a particular person, and which party the burden of proof shall be placed on.

### **4. Purpose of the Study**

The purpose of this research is to develop a scientific basis and draft recommendations concerning functioning and legal regulation of monetary surrogates in a modern economic system, as well as to form a unified approach to standards of proof in cases involving the use of digital assets.

### **5. Research Methods**

The research methodology is based on the principles of systematic approach with the use of comparative method, synthesis and analysis. In addition, the method of abstract-logical judgments and system-structural approach in the format of classification, systematization and comparison are used. The theoretical analysis is based on the study of works of domestic and foreign scholars who focus on legal regulation and using currency surrogates as a payment form.

### **6. Findings**

Lately, the so-called "e-money" has been used extensively. Its legal category is legally prescribed in Article 3 of the Federal Law No. 161-FZ dated June 27, 2011 "On National Payment System" (as amended on December 22, 2020). According to it e-money is considered to be an alternative payment form, rights to which differ from cash ownership rights (Lunts, 2019), because such currency cannot be

put in ordinary account and therefore, cannot improve national welfare system (Romanovskaya, 2015). At the same time, a number of scholars, for instance, Savelyev (2016), say that electronic money can acquire legal status in non-cash settlements, as it acts to fulfill monetary obligations. Another approach accepted in foreign practice is the recognition of the legitimate status of electronic money issued at the expense of financial public institutions, national banks not involved. Such an approach is common for Asian countries, such as Japan, Singapore and Hong Kong (Chelnokov, 2018).

This approach is a kind of an evolutionary one for the world practice of implementing the civil law principles, since it allows the authorized issue of alternative funds, but implies certain legal restrictions imposed in order to regulate the issuer's financial stability and the volume of issuance of this money category. The American model of legalizing and recognizing e-money legal status has some peculiarities, as such a model consolidates e-money status as a new type of monetary services, thereby moving the issue of e-money use to the sphere of normative regulation of settlement.

Electronic money is not universally used for payment purposes, if to compare with traditional cash or non-cash alternatives, which affects the subject composition of settlement legal relations.

For example, Part 9 of Article 117 of Federal Law No. 161-FZ dated June 27, 2011 "On National Payment System" (as amended on December 22, 2020) directly prohibits the settlements between legal entities and individual entrepreneurs with the use of alternative currencies, and bans e-money transactions in cash, which shows inability of domestic legislation to keep up with the world legal practice.

The analysis of the experience of using electronic money as a payment means that is capable to ensure that some financial obligation is fulfilled allows us to conclude that in foreign practice, the concept of "electronic money" includes such types of monetary surrogates as, for example, money stored on a magnetic medium, or in electronic form, that the operator provides and legal entities and individuals accept as a payment means.

Increasing popularity of electronic money abroad gave rise to new monetary surrogates, i.e. cryptocurrency, which is currently one of the most frequently discussed payment forms. Cryptocurrencies are a type of electronic money generated with the help of modern technologies and are a specific form of private money. In the Russian Federation, launching electronic money and recognizing its legal status is at its early stage nowadays. A sufficiently significant milestone in adopting laws regulating legitimate settlements and monetary circulation was enactment of Federal Law No. 259-FZ "On digital financial assets, digital currency and on amendments to some laws of the Russian Federation" in 2020. It stipulates that legitimate nature of digital money could be recognized and, as a result, the digital rights of participants in the national payment system would be protected. The main purpose of alternative currencies is to protect national economic interests and weaken the influence of universally admitted international currencies. At the same time, introduction of alternative currencies into settlement system requires compliance with their legitimization conditions, as well as formation of a transparent and clear system of legal regulation of their circulation, actively developed nowadays. In the Russian legislation system, the legal category of "currency surrogate", which is an analogue of alternative currency circulation, is considered from the perspective of two approaches. For instance, according to article 27 of the Federal Law No. 86-FZ "On the Central Bank of the Russian Federation (Bank of Russia)", dated July 10, 2002 (as amended on July 31, 2020), cash equivalent is an object having currency properties and

functions, used as payment means without any legal grounds. Lawmakers incorporate in this category monetary units issued in the territory of the Russian Federation without the relevant consent of the authorized state authorities, entitled to exercise all payment functions defined by law. At the same time, legislation also stipulates legitimate monetary surrogates considered to be legal payment form and belonging to national currency system (Krylov, 2012).

Another controversial aspect of e-money legal regulation in Russian practice is the issue of determining its origin, since the provisions of Federal Law No. 161 establish its derivative nature, which prevents any potential recognition of its independent existence. So, in particular, Articles 30.1 and 30.6 of Federal Law No. 161 (2011) do not include such concepts as "the issuance of electronic money", using this term only referring to issuance of plastic debit or credit cards. This norm is not also included in Federal Law No. 259 (2020), which determines the rights, powers and responsibilities of national payment system participants involved in the production of digital money and having digital rights.

One of the main proof problems in cases digital assets are involved in is the complexity in determining whether an electronic wallet belongs to a particular person due to its pseudonymity, and in some cases even anonymity, and in finding the ways and a particular person to confirm and prove digital assets' transfer. The fact of digital assets owned by some individual could be proven through certified inspection of web pages and finding out the person who has actual access to some online wallet, notwithstanding it could be anonymous. The transfer of digital assets, in turn, may be confirmed by a statement of transaction history and online wallet balance, and the burden of proof is determined by a general rule: whichever party refers to a certain fact, it must prove it, so the party claiming failed transfer of digital assets shall convince the court. In this area, Russian legal practice is limited and ambiguous.

Thus, considering the same dispute, the trial court (the Judgment of the Leninsky District Court of the city of Ulyanovsk of 13 April, 2018 in the case No. 1444/2018) and the court of second instance (the Appeal Ruling of the Ulyanovsk Regional Court of 31 July, 2018 in the case No. 33-3142/2018) resolved the dispute in different ways, only because burden of proof was shared between the parties differently. And in some cases, the parties take risks in such transactions at their discretion and their money is not subject to return (The Judgment of the Riazhsky District Court of the Ryazan Region of 26 April, 2017 in the case 2-160 / 2017 (M-129/2017)).

## **7. Conclusion**

The current approach to assess e-money legal status is based on the current legal framework that does not provide, in fact, normative regulation of this type of currency and mostly impedes its further potential use in accounting practice. In this case, it is necessary to carry out scientific research aimed not so much at finding ways of adapting the existing legal framework to the emerging new forms of currency but rather at creating a new legislation system that takes into account the current settlement changes and monetary circulation as a whole. A useful and necessary innovation will be the development of regulations defining the essence and legal status of electronic money and the specifics of its circulation, including, inter alia, foreign experience.

Based on the existing foreign practice, the concept of legal regulation, according to which electronic money is recognized as a new means of payment with the same legal effect as classical

accounting forms, is the basis for differentiation of e-currency rights. Russian legislation still does not enshrine the legal concept of "cryptocurrency", "virtual currency", despite the fact that virtual money circulation in our country is quite common. Domestic lawmakers, albeit marginally, came closer to solving this problem by introducing the concept of "digital money", "digital rights" into Federal Law No. 259 (2020) mentioned above, to some extent eliminating uncertainty in determining cryptocurrency ownership, which will lead to clarification of that currency legal status. However, this legal norm, despite its innovative content, poorly resolves the problem of legal regulation of alternative currency circulation forms. The concept of "cryptocurrency" should be developed in Russian legislation. Legal gaps what concerns the use of cryptocurrency as payment means significantly complicate the economy digitalization process in general and deprive the parties of statutory protection.

In other words, at present, monetary surrogates in the regulation of monetary circulation in the Russian Federation still have the legal status of deficient money having no internal marketability, having low liquidity and limited in its ability to be a payment means and subject to monetary liabilities (Evstigneev, 2019).

Thus, summing up the above, we shall emphasize that although at present there is much foreign experience on the problem of legal regulation of alternative and electronic money, in domestic legal practice this problem is reluctantly addressed by legislators because they try to protect the monopoly of issuance and circulation regulation of traditional monetary forms.

Nevertheless, the emergence and spread of new forms of payment media (e-money, cryptocurrencies, etc.) are integral for modern society; and in the future they will replace traditional cash and gain the share of non-cash payments made with the help of standard banking instruments.

## References

- Chelnokov, V. A. (2018). *Evolution of money, credit and banks*. Finance and Statistics Publisher.
- Dostov, V. L., & Shust, P. M. (2013). Enhancement of non-financial products: consumers' encouragement programs. *Banking Law*, 4, 3–12.
- Evstigneev, E. A. (2019) Digital rights in Russia: moving forward or running in a circle? *Journal of the Russian Orthodox Church*, 2, 48.
- Krylov, O. M. (2012). To the issue of the legal category of "money surrogate". *Financial Law*, 9, 10.
- Lunts, L. A. (2019). *Money and monetary obligations in civil law*. Statute Publisher.
- Romanovskay, Yu. (2015). Specifics of currency regulation of electronic payments. *Corporate Lawyer*, 12, 48.
- Savelyev, A. I. (2016). *E-commerce in Russia and abroad: legal regulation*. Statute Publisher.
- Vaipan, V. A. (2017). Fundamentals of digital economy legal regulation. *Law and Economics*, 11, 7.