

## Research Article

# CRYPTOCURRENCY IN THE DECLARATIONS OF GOVERNMENT OFFICIALS: A TOOLKIT FOR MONEY LAUNDERING (TRENDS AND EXPERIENCE OF COUNTERACTION, BY THE EXAMPLE OF UKRAINE)

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Submitted on 08 Aug 2022 / Revised 1<sup>st</sup> 12 Oct 2022 / Revised 2<sup>nd</sup> 12 Dec 2022 /

Approved **15 Mar 2023** / Published online: **20 Jun 2023** // Last Published: **1 Aug 2023**

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**Keywords:** money laundering, income declaration, corruption, civil servants, cryptocurrency, bitcoin.

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**Managing editor** – Mag Polina Siedova. **English Editor** – Julie Bold.

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**How to cite:** Hrytsai S ‘Cryptocurrency in the declarations of government officials: a toolkit for money laundering (trends and experience of counteraction, by the example of Ukraine)’ 2023 3 (20) Access to Justice in Eastern Europe 81-107. <https://doi.org/10.33327/AJEE-18-6.3-a000333>

## ABSTRACT

**Background:** An investigation was conducted into the 2020 campaign to declare the incomes of civil servants in Ukraine. On June 23, 2022, the country became a candidate for full accession to the European Union, subject to increased efforts to combat corruption. During the study period, it was found that 652 Ukrainian officials declared 46,351 bitcoins, which as of 04/01/2021 was the equivalent of 2 billion 564 million US dollars or 2 billion 348 million euros. Against this background, the existing anti-corruption legislation and the state anti-corruption apparatus are characterised.

**Methods:** To achieve objective scientific results, the author used methods such as analysis and synthesis to understand and build a logical chain of ideas. The author used the statistical method to emphasise their positions with real data regarding the situation that developed in practice.

**Results and Conclusions:** The study revealed a potential threat of money laundering by civil servants through the declaration of cryptocurrencies before their legalisation, against the background of a complete absence or imperfection of current laws. It was established that this factor was the most acute form on the evening of the planned state legalisation of cryptocurrencies. This highlights the need for states to take preventive measures to eliminate such risks before legalising cryptocurrencies and preventing “silent amnesties” regarding illegal capital transferred to cryptocurrencies or to “whitewash” future illegal proceeds in advance through the declaration of non-existent cryptocurrency.

## 1 INTRODUCTION

Ukraine applied for membership in the European Union on February 28, 2022, when active hostilities began on its territory, and it introduced martial law.<sup>2</sup> This happened on the fifth day after Russia announced the start of a special military operation, and its regular troops crossed the state border into Ukraine.<sup>3</sup> On March 7, 2022, the Council of the European Union asked the European Commission to provide its opinion on the application from Ukraine. By June 17, 2022, the European Commission published its conclusion, in which it recommended recognising the European perspective of Ukraine and granting it as a candidate for joining the European community. On June 23, 2022, the leaders of the European Union in Brussels approved the recommendations of the European Commission on granting Ukraine the status of a candidate for joining the European Union.<sup>4</sup>

However, please note that the European Commission, adopting its conclusion on June 17, 2022, on the eve of the adoption of the resolution, put forward several conditions for Ukraine

2 Decree of the President of Ukraine No 64/2022 ‘About the introduction of martial law in Ukraine’ of February 24, 2022 <<https://zakon.rada.gov.ua/laws/show/64/2022#Text>> accessed 20 July 2022; The law of Ukraine No 2102-IX ‘On the approval of the Decree of the President of Ukraine “On the introduction of martial law in Ukraine”’ of February 24, 2022 <<https://zakon.rada.gov.ua/laws/show/2102-20#Text>> accessed 20 July 2022.

3 Decree of the Federation Council of the Federal Assembly of the Russian Federation No. 35-SF ‘On the use of the Armed Forces of the Russian Federation outside the territory of the Russian Federation’ of February 22, 2022 <<https://www.council.gov.ru>> accessed 20 July 2022.

4 ‘European Council Conclusions on Ukraine, the Membership Applications of Ukraine, the Republic of Moldova and Georgia, Western Balkans and External Relations, 23 June 2022’ (Council of the EU and the European Council, 23 June 2022) <<https://www.consilium.europa.eu/en/press/press-releases/2022/06/23/european-council-conclusions-on-ukraine-the-membership-applications-of-ukraine-the-republic-of-moldova-and-georgia-western-balkans-and-external-relations-23-june-2022/>> accessed 20 July 2022.

to retain its status, and it moved further towards the status of a full member of the European Union. Here are two of the seven requirements that relate to our research:

Further strengthen the fight against corruption, in particular at a high level, through proactive and efficient investigations and a credible track record of prosecutions and convictions; complete the appointment of a new head of the Specialised Anti-Corruption Prosecutor's Office through certifying the identified winner of the competition and launch and complete the selection process and appointment for a new Director of the National Anti-Corruption Bureau of Ukraine;

Ensure that anti-money laundering legislation complies with the standards of the Financial Action Task Force (FATF); adopt an overarching strategic plan for the reform of the entire law enforcement sector as part of Ukraine's security environment.<sup>5</sup>

It should be noted that the Parliament of Ukraine, much earlier, ratified<sup>6</sup> the international standards for combating money laundering, terrorist financing, and the proliferation of weapons of mass destruction, which are recommended by the FATF.<sup>7</sup> However, based on the recommendations of the European Commission, their implementation was of inferior quality. These two requirements for Ukraine from the European Commission can be summarised as the fight against corruption and money laundering.

Furthermore, it is remarkable that these are two of the three key elements of the title of this research topic. Cryptocurrency is the missing element, but as is widely known, it is precisely this one that has been used recently to launder money obtained through criminal means, in that case also from corruption crimes committed by public officials.<sup>8</sup> In this way, the research will be aimed at laundering money obtained from corruption crimes using cryptocurrencies, using the example of Ukraine, in the context of the requirements of the European Commission dated 13 June 2022 nominated to it during its acceptance as a candidate for membership of the European Union.

5 'EU Commission's Recommendations for Ukraine's EU Candidate Status' (*EEAS Website*, 17 June 2022) <[https://www.eeas.europa.eu/delegations/ukraine/eu-commissions-recommendations-ukraines-eu-candidate-status\\_en?s=232](https://www.eeas.europa.eu/delegations/ukraine/eu-commissions-recommendations-ukraines-eu-candidate-status_en?s=232)> accessed 20 July 2022.

6 Recommendations of the International Organization for Combating Money Laundering (FATF) 'Forty Recommendations of the Financial Action Task Force to Combat Money Laundering (FATF)' of September 25, 2003 <[https://zakon.rada.gov.ua/laws/show/835\\_001#Text](https://zakon.rada.gov.ua/laws/show/835_001#Text)> accessed 20 July 2022.

7 FATF, '12-Month Review of the Revised FATF Standards on Virtual Assets and Virtual Asset Service Providers' (*FATF*, 2020) <<https://www.fatf-gafi.org/media/fatf/documents/recommendations/12-Month-Review-Revised-FATF-Standards-Virtual-Assets-VASPS.pdf>> accessed 14 May 2022; FATF, 'Second 12-Month Review of the Revised FATF Standards on Virtual Assets and Virtual Asset Service Providers' (*FATF*, 2021) <<https://www.fatf-gafi.org/media/fatf/documents/recommendations/Second-12-Month-Review-Revised-FATF-Standards-Virtual-Assets-VASPS.pdf>> accessed 14 May 2022; FATF, 'Guidance for a Risk-Based Approach Virtual Assets and Virtual Asset Service Providers' (*FATF*, 2019) <<https://www.fatf-gafi.org/media/fatf/documents/recommendations/RBA-VA-VASPS.pdf>> accessed 14 May 2022; FATF, 'FATF recommendations international standards for combating money laundering, terrorist financing and the proliferation of weapons of mass destruction; Methodology for assessing compliance with FATF recommendations and the effectiveness of anti-money laundering and counter-terrorist financing systems; Rules and procedures of the 5th round of mutual evaluations by the MONEYVAL committee' (*FATF*, 2018) <<https://fiu.gov.ua/assets/userfiles/books/5%20round%20FATF.pdf>> accessed 20 July 2022.

8 '12-Month Review of the Revised FATF Standards on Virtual Assets and Virtual Asset Service Providers' (n 7); 'Second 12-Month Review of the Revised FATF Standards on Virtual Assets and Virtual Asset Service Providers' (n 7); 'Guidance for a Risk-Based Approach Virtual Assets and Virtual Asset Service Providers' (n 7); 'FATF recommendations international standards for combating money laundering, terrorist financing and the proliferation of weapons of mass destruction; Methodology for assessing compliance with FATF recommendations and the effectiveness of anti-money laundering and counter-terrorist financing systems; Rules and procedures of the 5th round of mutual evaluations by the MONEYVAL committee' (n 7).

## 2 REVIEW OF THE LITERATURE AND INITIAL PREREQUISITES

To conduct research towards the topic of the article was prompted to conduct research in the direction of the topic of the article by a relatively recent post on the Telegram channel of one of the high-ranking officials of the Ukrainian government, namely the Deputy Prime Minister, Minister of Digital Transformation of Ukraine Mykhailo Fedorov<sup>9</sup>: “*This year, 652 Ukrainian officials declared 46,351 bitcoins worth UAH 75 billion. Either they fantasized them to justify their cash and whiten their money later, or we have more progressive and far-sighted investors than we thought.*”<sup>10</sup> Moreover, at the time of the publication of this post in the Telegram channel, on April 7, 2022, the amount indicated there, according to the exchange rate of the hryvnia (author’s note – the national currency of Ukraine) established by the National Bank of Ukraine, was equivalent to 2 billion 564 million US dollars or 2 billion 348 million euros.<sup>11</sup>

### 2.1 Anti-money laundering: global trends

The antidote to the crime called “money laundering” began in the late 1980s as a response to the violent surge of this phenomenon that occurred in the early 1980s. A pioneer in this direction was the creation at the international level of the Committee on Rules and Methods of Controlling Banking Operations (Basel Committee). Among its participants were European countries, the USA, and Japan. It was the slogan and reflected the views of the central banks of the participatory countries. In December 1988, the Committee adopted the declaration “On preventing the use of the banking system to launder money got through criminal means.”<sup>12</sup> However, for the first time at the international level, the definition of the term “laundering (legalisation) of criminal proceeds” was provided in the UN Convention “On Combating Illicit Traffic in Narcotic Drugs and Psychotropic Substances,” dated December 20, 1988.<sup>13</sup> And then, this term was used more and more often: the Convention of the Council of Europe “On Laundering, Search, Seizure, and Confiscation of Proceeds of Crime” (1990);<sup>14</sup> Resolution of the UN General Assembly adopted the Political Declaration on Combating Drug Trafficking (1998);<sup>15</sup> International Convention for the Suppression of the Financing of Terrorism (1999);<sup>16</sup> UN Convention against Transnational Organized

9 ‘About us. Ministry of Digital Transformation of Ukraine’ (*Ministerstvo tsyfrovoyi transformatsii Ukrainy*) <<https://thedigital.gov.ua/ministry>> accessed 18 July 2022.

10 M Fedorov, ‘Telegram: Contact @zedigital’ (7 April 2021) <<https://t.me/zedigital/654>> accessed 18 July 2022.

11 ‘The official exchange rate of the hryvnia against foreign currencies’ (*Natsionalnyi bank Ukrainy*) <<https://bank.gov.ua/ua/markets/exchangerates>> accessed 22 July 2022.

12 ‘Principles for the Management of Interest Rate Risk’ (*BIS*, 1997) <<https://www.bis.org/publ/bcbs29a.htm>> accessed 20 July 2022; ‘Enhancing Bank Transparency’ (*BIS*, 1998) <<https://www.bis.org/publ/bcbs41.htm>> accessed 20 July 2022; ‘Framework for Internal Control Systems in Banking Organisations’ (*BIS*, 1998) <<https://www.bis.org/publ/bcbs40.htm>> accessed 20 July 2022; ‘Enhancing Corporate Governance for Banking Organisations’ (*BIS*, 1999) <<https://www.bis.org/publ/bcbs56.htm>> accessed 20 July 2022; ‘Principles for the Management of Credit Risk’ (*BIS*, 1999) <<https://www.bis.org/publ/bcbs54.htm>> accessed 20 July 2022.

13 United Nations Convention, ‘Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances’ 1988 <[https://www.unodc.org/pdf/convention\\_1988\\_en.pdf](https://www.unodc.org/pdf/convention_1988_en.pdf)> accessed 20 July 2022.

14 Council of Europe No. 141, ‘Convention on laundering, search, seizure and confiscation of the proceeds from crime’ 1990 <<https://rm.coe.int/168007bd23>> accessed 20 July 2022.

15 Resolution of the UN General Assembly, ‘Political Declaration on Combating Drug Trafficking’ 1998 <[https://www.unodc.org/unodc/en/commissions/CND/Political\\_Declarations/Political-Declarations\\_1998-Declaration.html](https://www.unodc.org/unodc/en/commissions/CND/Political_Declarations/Political-Declarations_1998-Declaration.html)> accessed 20 July 2022.

16 United Nations, ‘International Convention for the Suppression of the Financing of Terrorism’ 1999 <<https://treaties.un.org/doc/db/terrorism/english-18-11.pdf>> accessed 20 July 2022.

Crime (2000);<sup>17</sup> UN Convention against Corruption (2003)<sup>18</sup> and other. Such widespread use led to the term “income laundering” becoming accepted, i.e., understood by ordinary citizens, as a negative social phenomenon.

The Financial Action Task Force (FATF) is currently the key institutional organisation of intergovernmental (international) cooperation combating money laundering. They initially established the FATF in July 1989 at a Group of Seven (G-7) Summit in Paris to examine and develop measures to combat money laundering. In October 2001, the FATF expanded its mandate to incorporate efforts to combat terrorist financing and money laundering. In April 2012, it added efforts to counter the financing of the proliferation of weapons of mass destruction. Since its inception, the FATF has operated under a fixed lifespan, requiring a specific decision by its ministers to continue. Three decades after its creation, in April 2019, the Ministers of the FATF adopted a new, open-ended mandate for the FATF. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory, and operational measures for combating money laundering, terrorist financing, and other related threats to the integrity of the international financial system. Starting with its members, the FATF monitors countries' progress in implementing the FATF recommendations ; reviews money laundering and terrorist financing techniques and counter-measures, and promotes the adoption and implementation of the FATF Recommendations globally.<sup>19</sup> First issued in 1990, it revised the FATF Guidelines in 1996, 2001, 2003, and then again in 2012, all to show their relevance and universality.<sup>20</sup>

Money laundering is often referred to as a process of disguising the origin of illegally obtained funds and integrating them into the mainstream financial system to appear as a legitimate source of income. It is considered one of the biggest threats to a well-established economy and public safety. Money laundering has three stages: placement , layering, and integration. Placement involves introducing illicitly acquired funds into the financial system<sup>21</sup> . In the layering stage, illicit funds previously deposited into the financial system are obfuscated with complex transactions to frustrate auditing traceability. The integration stage channels the “washed” money that appears legitimate to mainstream investments. Since the fintech industry introduced new payment technologies that enable complex money transactions, money laundering has been identified as “cyber laundering”. If cryptocurrencies are used in the money laundering process, it is named “crypto-laundering” or “virtual money laundering”. As a result, cryptocurrencies have become a new tool for crime groups to launder illegally obtained funds.<sup>22</sup>

- 17 UN General Assembly, 'United Nations Convention Against Transnational Organized Crime and the Protocols Thereto' 2000 <<https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>> accessed 20 July 2022.
- 18 United Nations, 'United Nations Convention against corruption' 2003 <[https://www.unodc.org/documents/brussels/UN\\_Convention\\_Against\\_Corruption.pdf](https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf)> accessed 20 July 2022.
- 19 FATF, 'Group for the development of financial measures to combat money laundering – FATF' <<https://www.fiu.gov.ua/content/uk/fatf.htm>> accessed 14 May 2022; FATF, 'About – Financial Action Task Force' <<https://www.fatf-gafi.org/about/>> accessed 20 July 2022.
- 20 FATF, 'International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. FATF Recommendations' (FATF, 2012) <<https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>> accessed 15 May 2022.
- 21 Ilbiz, E., & Kaunert, C. (2022). Sharing Economy for Tackling Crypto-Laundering: The Europol Associated 'Global Conference on Criminal Finances and Cryptocurrencies.' Sustainability, 14(11), Article 11. <https://doi.org/10.3390/su14116618>
- 22 E Ilbiz, C Kaunert, 'Sharing Economy for Tackling Crypto-Laundering: The Europol Associated 'Global Conference on Criminal Finances and Cryptocurrencies' (2022) 14(11) Sustainability Article 11. <https://doi.org/10.3390/su14116618>; C Albrecht, K Duffin, S Hawkins, V M Morales Rocha, 'The use of cryptocurrencies in the money laundering process' (2019) 22(2) Journal of Money Laundering Control 210–216. <https://doi.org/10.1108/JMLC-12-2017-0074>.

Tracing back illegitimate sources of cryptocurrency becomes more challenging if criminals use “mixing” and “tumbler” services. Mixing and tumbler services’ put another obfuscation layer to cryptocurrency transactions. These services pool crypto assets from many users and randomly send mixed coins to the recipient wallet addresses after deducting a transaction fee. The difference between the two services is that while tumblers distribute the same kind of cryptocurrency to the client’s wallet, mixers send a different cryptocurrency, making blockchain analysis more complicated. Some mixing and tumbler services use random delay times and randomised fees to make correlation analysis more difficult for investigators.<sup>23</sup>

Money laundering with cryptocurrencies has similar stages to fiat currencies. At the placement stage, cryptocurrencies are purchased from unregulated cryptocurrency exchanges, ATMs, or online platforms where peers exchange cryptocurrencies. Crime groups also recruit money mules to buy cryptocurrencies on their behalf. During the layering stage, the source of cryptocurrencies is obfuscated with mixing and tumbler services or converted to privacy coins to make them untraceable. Initial coin offerings (ICO) are another method exploited in the layering stage in which dirty cryptocurrencies are exchanged with newly minted coins. The use of non-fungible tokens (NFTs) in layering is another technique of recent times that there is increasing suspicion of their role in crypto-laundering. These tokens are collectables that represent a digital art piece in the blockchain. Perpetrators buy their self-created NFT through an anonymous account, declaring they have sold their piece to a higher bid. Their unpredictable valuation makes them a perfect tool to clean illegitimate proceeds. In the integration stage, the cleansed cryptocurrencies are cashed out by money mules in a regulated cryptocurrency exchange offering cryptocurrency exchange with fiat currencies.<sup>24</sup>

Most texts dealing with the relationship between cryptocurrencies and corruption focus only on the issue of whether cryptocurrencies can facilitate corruption or, on the contrary, reduce corruption. The authors who believe that cryptocurrencies can serve as means for corruption transactions usually emphasise the anonymity of cryptocurrency users. However, several authors (e.g., Aldaz-Carroll and Aldaz-Carroll, 2018) take the opposite view, arguing that cryptocurrencies can reduce corruption. They believe that if a cryptocurrency contains information about all transactions made in the past, it is possible to identify, at least approximately, the different parties to the transactions from the history thereof using current methods (big data analysis) or, where appropriate, it would be possible to create a cryptocurrency where information about the contracting parties is included in the transaction. It is essential to emphasise that not all authors share the above optimism. Simply put, if those in power still seek to perpetrate fraud, especially those that involve collusion, blockchain may not be a deterrent. Dudley, Pond and Carden (2019) thus offer, in our opinion, a realistic vision emphasising the fact that cryptocurrencies may reduce corruption, as well as the fact that they can contribute to corruption.<sup>25</sup>

Wawrosz Petr and Jan Lansky’s (2021) scenarios imply that cryptocurrencies allow parties to a corrupt contract to transfer a bribe (or, more generally, a benefit received by a corrupt agent or person associated with that agent) in a relatively anonymous way. Cryptocurrencies thus extend the possibility for corruption to situations which, until now, had posed the risk that the bribe would identify the parties to the corruption-tainted contract and expose their corrupt behaviour. If fiat money is used as a bribe, handing over such bribe in cash is associated with the risk of loss or the risk that counterfeit bills will be used for the bribe. In

23 Ilbiz, Kaunert (n 21).

24 Ibid.

25 P Wawrosz, J Lansky, ‘Cryptocurrencies and Corruption’ (2021) 7(69) *Ekonomický Časopis* 687–705. <https://doi.org/10.31577/ekoncas.2021.07.02>.

bank transfers, it is nowadays relatively easy to identify both the payer and the beneficiary. Other forms of bribes often require a personal meeting between the corrupting agent and the corrupt agent or other persons representing them. Cryptocurrencies reduce those risks at least partially. Although the corrupting agent must still find a suitable person who will violate their duties in favour of the corrupting agent, this search can now also take place online. Consequently, cryptocurrencies, together with the online environment, reduce the transaction costs of corruption, making contact between the parties to a corruption-tainted contract easier. All of this can result in the expansion of corruption practices.<sup>26</sup>

## 2.2 Stages of evolution of the legal regime for cryptocurrencies in Ukraine

Moreover, all this is happening against the background of the implementation in 2016 of a wide-ranging state program aimed at legalising cryptocurrencies in Ukraine.<sup>27</sup>

It can be conditionally divided into two stages: 1) before, 2) and after the Law of Ukraine "On Virtual Assets", which introduced several legal definitions, classifications and regulations of cryptocurrencies and the legal framework that established the "legal era" of cryptocurrencies in Ukraine.

In the first stage, the vast majority of draft laws submitted to the Parliament of Ukraine were not so much about regulating cryptocurrency circulation as about taxation of cryptocurrency. This is due to the proposed amendments to the Tax Code of Ukraine and/or other regulatory acts, usually solely for the purpose of taxation of cryptocurrency circulation:

Draft Law on the circulation of cryptocurrency in Ukraine dated 06 October 2017 No. 7183;<sup>28</sup>

Draft Law on Stimulation of the Market for Cryptocurrencies and Their Derivatives in Ukraine dated 10.10.2017 No. 7183-1;<sup>29</sup>

Draft Law on Amendments to the Tax Code of Ukraine on Taxation of Transactions with Virtual Assets in Ukraine dated 14.09.2018 No. 9083;<sup>30</sup>

The Draft Law on Amendments to the Tax Code of Ukraine on Taxation of Transactions with Virtual Assets in Ukraine dated 27.09.2018 No. 9083-1;<sup>31</sup>

The Draft Law on Amendments to the Tax Code of Ukraine and Some Other Laws of Ukraine on Taxation of Transactions with Crypto Assets dated 15.11.2019 No. 2461.<sup>32</sup>

26 Ibid.

27 'Ministry of Digital Transformation / Virtual asset' (*Ministry of Digital Transformation*) <[https://thedigital.gov.ua/projects/virtual\\_assets](https://thedigital.gov.ua/projects/virtual_assets)> accessed 2 July 2022.

28 Draft Law on Cryptocurrency Circulation in Ukraine No 7183 of October 6, 2017 <[https://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=62684](https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62684)> accessed 2 July 2022.

29 Draft Law on Stimulating the Market of Cryptocurrencies and Their Derivatives in Ukraine No 7183-1 of October 6, 2017 <[https://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=62710](https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62710)> accessed 2 July 2022.

30 Draft Law on Amendments to the Tax Code of Ukraine on Taxation of Transactions with Virtual Assets in Ukraine No 9083 of September 14, 2018 <[https://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=64597](https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64597)> accessed 15 April 2022.

31 Draft (second edition) of the Law on Amendments to the Tax Code of Ukraine on Taxation of Transactions with Virtual Assets in Ukraine No 9083-1, September 27, 2018 <[https://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=64696](https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64696)> accessed 15 April 2022.

32 Draft Law on Amendments to the Tax Code of Ukraine and Some Other Laws of Ukraine Regarding Taxation of Transactions with Crypto Assets No 2461 of November 15, 2019 <[http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=67423](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67423)> accessed 15 April 2022.

The position of lawmakers and tax authorities in the formation of the draft legal framework for the taxation of cryptocurrencies was based on the fact that such relations are associated with the circulation of certain values, and therefore, with the receipt of certain benefits (income or profit) during or as a result of such circulation.

The evolution of the definition of cryptocurrencies in the draft laws mentioned above followed a downward trend: from endowing them with the properties of fiat money to altogether rejecting this idea.

On February 17, 2022, the Parliament of Ukraine adopted the Law of Ukraine “On Virtual Assets” No. 2074-IX (hereinafter – Law 2074)<sup>33</sup>, which the President of Ukraine signed on March 15, 2022. This law fully legalises the circulation of cryptocurrencies in Ukraine at the legislative level. According to Clause 1 of Section VI “Final and Transitional Provisions” of Law 2074, the law itself will enter force: a) from entry into force of the Law of Ukraine On Amendments to the Tax Code of Ukraine, regarding the specifics of taxation of operations with virtual assets; b) implementation of the State Register of service providers related to the turnover of virtual assets, which is additionally specified in Clause 2 of Chapter VI of the Final and Transitional Provisions, as a limitation in the possibility of applying sanctions provided for in Article 23 of Law 2074. To fulfil Clause 1 of Chapter VI of Law 2074 and to put it into effect, the Parliament of Ukraine registered draft law No. 7150 with amendments to the Tax Code of Ukraine on 13.03.2022.<sup>34</sup>

Significant events have taken place since February 17, 2022, namely since the adoption of Law 2074 by the Parliament of Ukraine and until the beginning of 2023. They significantly influenced the plans of the Parliament of Ukraine to introduce mandatory amendments to the Tax Code of Ukraine (regarding the taxation of virtual assets) from 01 October 2022 and simultaneously enact Law 2074.

Among these events is Ukraine’s acquisition of the status of a candidate for accession to the European Union on 23 June 2022<sup>35</sup>. The text of the Markets in Crypto Assets Regulation (MiCA) bill was seized on 5 January 2022.<sup>36</sup> This will become the basis for regulating cryptocurrencies in the European Union. Furthermore, on October 10, members of the European Parliament’s Committee on Economic and Monetary Affairs adopted a draft law on cryptocurrency regulation, thus supporting the MiCA regulation and all relevant provisions.

These two factors caused the suspension of enacting the relevant Law 2074 regulating cryptocurrencies. As Ukraine becomes a candidate for EU membership, the norms of domestic legislation, including those related to virtual assets, should be adapted to European standards, and the MiCA Regulation is no exception.

33 The Law of Ukraine No 2074-IX ‘On virtual assets’ of February 17, 2022 <<https://zakon.rada.gov.ua/laws/show/2074-20#Text>> accessed 15 April 2022.

34 ‘Draft No. 7150 of the Law on Amendments to the Tax Code of Ukraine on Taxation of Transactions with Virtual Assets’ <<https://itd.rada.gov.ua/billInfo/Bills/Card/39211>> accessed 15 April 2022.

35 ‘European Council Conclusions on Ukraine, the Membership Applications of Ukraine, the Republic of Moldova and Georgia, Western Balkans, and External Relations, 23 June 2022’ (*Council of the EU and the European Council*, 23 June 2022) <<https://www.consilium.europa.eu/en/press/press-releases/2022/06/23/european-council-conclusions-on-ukraine-the-membership-applications-of-ukraine-the-republic-of-moldova-and-georgia-western-balkans-and-external-relations-23-june-2022/>> accessed 20 July 2022.

36 Proposal for a Regulation of the European Parliament and the Council on Markets in Crypto-assets, and amending directive (eu) 2019/1937 2022 380.



An advisory board has already been established,<sup>37</sup> which is developing amendments to Law 2074 to implement the European MiCA regulation into Ukrainian legislation.<sup>38</sup>

### 3 METHODS

The subject and scope of the study determined the set of methodological tools used by the author. The methodological basis of the research includes a set of philosophical, general scientific, and special legal methods of scientific knowledge. The applied methodology made it possible to: outline the circle of potential threats when declaring cryptocurrencies by public officials on the eve of the legalisation of cryptocurrencies, identify the main problems in the activities of a large number of state anti-corruption agencies when declaring cryptocurrencies by officials, and develop the main directions of state policy in solving the problem of anti-corruption activities on the eve of the legalisation of cryptocurrencies. The descriptive method made it possible to present the research results logically. Using philosophical methods, in particular, the dialectical approach, the correlation between the beginning of the procedure of legalisation of cryptocurrencies and their mass declaration by officials on the eve of such innovations is highlighted. The arithmetic calculation, ranking, comparison for different periods, and the dynamics of the declaration of cryptocurrencies by civil servants on the eve of their legalisation were carried out using statistical methods. At the theoretical level of analysis, the legislative framework's main provisions regulating state bodies' anti-corruption system were studied. The normative method was used to analyse aspects of issues arising within the legal regulatory framework of civil servants' duty to submit income declarations. The use of the assessment method allowed the author of the study to conclude the potential level of corruption among civil servants based on the cryptocurrencies they had declared. The research also adopted methods of synthesis, analogy, system, classification and analysis. Thanks to the structural and functional analysis, it was possible to consider the structure of declared cryptocurrencies by civil servants in terms of their positions. Thanks to the classification method, authorities whose civil servants declared cryptocurrency were classified according to their value level (local, regional or state-wide). The synthesis method made it possible to solve the research problems of the analysis of the primary sources of the subject (declarations of civil servants).

Furthermore, applying the analytical method to these primary sources made it possible to determine the most effective provisions that can be implemented in the national legal system as a preventive anti-corruption protection. Induction and deduction methods were used to analyse the content and structure of legislative texts and features of legal provisions in the context of anti-corruption activities regarding the verification of the origin of declared cryptocurrencies. The technical-legal and systematic methods were used to study the anti-corruption practice of state bodies and courts regarding verifying the declarations of public officials who declared cryptocurrency. The methods used allowed the author to obtain reliable and substantiated conclusions and results on the research topic.

37 'The first meeting of the Advisory Council on Regulation of Virtual Assets was held' (*Natsionalna komisiia z tsinnykh paperiv ta fondovoho rynku*, 1 December 2022) <<https://www.nssmc.gov.ua/vidbulos-pershe-zasidannia-konsultatsiinoi-rady-z-pytan-rehuliuвання-virtualnykh-aktyviv/>> accessed 30 January 2023; 'Cabinet of Ministers of Ukraine – The first meeting of the Advisory Council on Regulation of Virtual Assets was held' (*Uriadovi portal*, 1 December 2022) <<https://www.kmu.gov.ua/news/vidbulos-pershe-zasidannia-konsultatsiinoi-rady-z-pytan-rehuliuвання-virtualnykh-aktyviv>> accessed 30 January 2023.

38 'The Advisory Council on the Regulation of Virtual Assets has started drafting changes to the relevant law' (*Natsionalna komisiia z tsinnykh paperiv ta fondovoho rynku*, 27 December 2022) <<https://www.nssmc.gov.ua/konsultatsiina-rada-z-pytan-rehuliuвання-virtualnykh-aktyviv-prystupyla-dorozrobky-zmin-v-profilnyi-zakon/>> accessed 31 January 2023.

## 4 RESULTS AND DISCUSSIONS

Corruption is an insidious plague with a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to human rights violations, distorts markets, erodes the quality of life, and allows organised crime, terrorism, and other threats to human security to flourish. All countries, big and small, rich and poor, have found this evil phenomenon, but it is in developing countries that its effects are most devastating. Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a government's ability to provide basic services, feeding inequality and injustice, and discouraging foreign aid and investment. Corruption is a key element in economic underperformance and a major obstacle to poverty alleviation and development.<sup>39</sup>

In Ukraine, the new Anti-Corruption Strategy for 2021–2025 was recently adopted, which shows that the results of sociological studies show that the share of citizens who have direct experience of corruption has significantly decreased in recent years (in 2013, about 60 percent had such experience, as of the beginning of 2020 – only 40 percent of citizens). There is a gradual improvement in the comparative indicators of the level of corruption in Ukraine. According to the data between 2013 and 2019 of the international organisation “Transparency International”, the Corruption Perception Index (CPI) in Ukraine increased from 25 to 30 points. This confirms that the progress made in recent years does not satisfy society, as it is too slow. The European Commission, in its conclusion on the applications for membership in the European Union submitted by Ukraine, Georgia, and the Republic of Moldova dated 17 June 2022, noted that Ukraine had made significant progress on the way to the rule of law but still has a long way to go in its fight against corruption.<sup>40</sup>

In addition, it is noted that in addition to the above-mentioned improvement of the CPI indicator for 2013–2019 stated in the Anti-Corruption Strategy for 2021–2025, the Corruption Perception Index for 2021 decreased, putting Ukraine from 117th to 122nd place out of 180 countries. This can be seen in Table 1.

**Table 1.** Analysis of CPI index for Ukraine in 2012–2021 by order of 188 countries from the rating list<sup>41</sup>

№	The Year	Ukraine's place in the ranking of countries by the CPI index	CPI index dynamics for Ukraine
1	2012	144	26
2	2013	144	25
3	2014	142	26
4	2015	130	27
5	2016	131	29
6	2017	130	30
7	2018	120	32
8	2019	126	30
9	2020	117	33
10	2021	122	32

39 United Nations Convention against corruption (n 18).

40 The Law of Ukraine No 2322-IX 'On the principles of the state anti-corruption policy for 2021–2025' of June 20, 2022 <<https://zakon.rada.gov.ua/laws/show/2322-20#Text>> accessed 31 January 2023.

41 '2021 Corruption Perceptions Index – Explore the Results' (Transparency.org) <<https://www.transparency.org/en/cpi/2021>> accessed 10 July 2022.

The low rate of implementation of the anti-corruption policy in Ukraine significantly slows down its economic growth. A business survey shows that the prevalence of corruption and distrust of the judicial system are the principal obstacles to attracting foreign investment to Ukraine. The concentration of efforts on implementing an anti-corruption policy will enable Ukraine to catch up with the CPI indicators of the Eastern European states – members of the European Union in the coming years and reach the average European CPI values in 10 years.<sup>42</sup>

For this purpose, Ukraine has created a network of specialised government agencies to counteract corruption. It should be noted right away that it is quite extensive in Ukraine and comprises seven specialised state institutions: the National Anti-Corruption Policy Council,<sup>43</sup> the National Anti-Corruption Bureau of Ukraine,<sup>44</sup> the National Agency for the Prevention of Corruption,<sup>45</sup> the Specialized Anti-Corruption Prosecutor's Office,<sup>46</sup> the State Bureau of Investigation,<sup>47</sup> the High Anti-Corruption Court,<sup>48</sup> National Agency of Ukraine for detection, search, and management of assets got from corruption and other crimes.<sup>49</sup>

Note that only specialised institutions are listed, without considering the existing general law enforcement system of Ukraine, which has the following main departments: the Prosecutor General's Office, the National Police, the Bureau of Economic Security, the Supreme Court, and others.

According to the President of Ukraine, Volodymyr Zelensky, in recent years Ukraine has created an anti-corruption structure with no analogues in Europe.<sup>50</sup> However, such a significant number of specialised state institutions to combat corruption in Ukraine is at least surprising against the background of the rather poor results they show in the fight against corruption in Ukraine, which can be observed from the above analysis of CPI indicators in table 1.<sup>51</sup>

## 4.1 Submission of declarations as the duty of civil servants

One of the anti-corruption tools introduced back in 2014 was the obligation of civil servants to submit electronic declarations of property, income, and financial liabilities (the

42 'On the principles of the state anti-corruption policy for 2021–2025' (n 39).

43 Decree of the President of Ukraine No 808/2014 'On the National Council on Anti-Corruption Policy' of October 14, 2014 <<https://zakon.rada.gov.ua/laws/show/808/2014#Text>> accessed 10 July 2022.

44 The Law of Ukraine No 1698-VII 'About the National Anti-Corruption Bureau of Ukraine' of October 14, 2014 <<https://zakon.rada.gov.ua/laws/show/1698-18#Text>> accessed 10 July 2022.

45 The Law of Ukraine No 1700-VII 'On Prevention of Corruption' of October 14, 2014 <<https://zakon.rada.gov.ua/laws/show/1700-18#Text>> accessed 10 July 2022.

46 Order of the Prosecutor General's Office No. 125 'On Approval of the Regulations on the Specialized Anti-Corruption Prosecutor's Office of the Prosecutor General's Office' of March 5, 2020 <<https://zakon.rada.gov.ua/laws/show/v0125905-20#Text>> accessed 10 July 2022.

47 Resolution of the Cabinet of Ministers of Ukraine No. 127 'On the establishment of the State Bureau of Investigation' of February 29, 2016 <<https://zakon.rada.gov.ua/laws/show/127-2016-%D0%BF#Text>> accessed 26 July 2022.

48 The Law of Ukraine No 2447-VIII 'On the Supreme Anti-Corruption Court' of June 7, 2018 <<https://zakon.rada.gov.ua/laws/show/2447-19#Text>> accessed 26 July 2022.

49 The Law of Ukraine No 772-VIII 'About the National Agency of Ukraine for Identification, Search and Management of Assets Obtained from Corruption and Other Crimes' of November 11, 2015 <<https://zakon.rada.gov.ua/laws/show/772-19#Text>> accessed 26 July 2022.

50 Yuliia Zakharchenko, 'Antykoruptsiina struktura Ukrainy ne maie analogiv u Yevropi – Zelenskyi' (FAKTY ICTV, 20 August 2021) <<https://fakty.com.ua/ua/ukraine/polituka/20210820-antykoryuptsiina-struktura-ukrayiny-ne-maye-analogiv-u-yevropi-zelenskyj/>> accessed 26 July 2022.

51 '2021 Corruption Perceptions Index – Explore the Results' (n 40).

Declaration) owned by the civil servant. This obligation came into force after the creation of the NAPC and the Unified State Register of Declarations<sup>52</sup> in August 2016.

The Law of Ukraine “On Prevention of Corruption”<sup>53</sup> (hereinafter Law 1700) and the Procedure for filling out and submitting a declaration of a person allowed to perform the function of the state or local self-government<sup>54</sup> provide the following cases of declaration submission by public servants.

1) Annual declaration – a declaration submitted by Part 1 of Art. 45 of the Law of 1700, or paragraph 2 of Part 2 of Art. 45 of Law 1700 in the period from 00 hours 00 minutes on January 1 to 00 hours 00 minutes on April 1 of the year following the reporting year. Such a declaration covers the reporting year (the period from 1 January to 31 December inclusive), which precedes the year in which they submitted the declaration, and, as a general rule, contains information as of December 31 of the reporting year. The obligation to submit an annual declaration arises from the subject of the declaration:

every year during the period of carrying out an activity that involves the obligation to submit a declaration or holding a position that requires carrying out such activity (annual declaration (continuing activity));

the following year after the termination of the activity that involves the obligation to submit a declaration, or holding a position that requires the implementation of such activity (annual declaration (after dismissal)).

2) Declaration upon dismissal – a declaration submitted by paragraph 1, part 2 of Article 45 of Law 1700 no later than 30 calendar days from the day of termination of activity. Such a declaration is submitted for a period that was not covered by declarations previously submitted by the subject of the declaration and contains information as of the last day of such period, which is the last day of the activity that entails the obligation to submit a declaration, holding a position that causes carrying out such activities.<sup>55</sup>

3) Declaration of a candidate for a position – a declaration that is submitted following paragraph 1, part 3 of Article 45 of Law 1700 and covers the reporting period from 1 January to 31 December inclusive, which precedes the year in which the person applied for the position unless otherwise provided by law, and as a general rule contains information as of December 31 of the reporting year. Such a declaration is submitted after the person is determined as the winner of the competition, before the day of appointment or election of the person to the position.<sup>56</sup>

52 NASK of Ukraine, ‘Entrance to the system’ (*Yedynyi derzhavnyi reistr deklaratsii*) <<https://portal.nazk.gov.ua/login>> accessed 20 July 2022.

53 On Prevention of Corruption (n 44).

54 Order of the National Agency for the Prevention of Corruption No 449/21 ‘On approval of the declaration form of the person authorised to perform the functions of the state or local self-government, and the Procedure for filling out and submitting the declaration of the person authorised to perform the functions of the state or local self-government’ of July 23, 2021 <<https://zakon.rada.gov.ua/laws/show/z0987-21#Text>> accessed 20 July 2022.

55 On Prevention of Corruption (n 44); On approval of the declaration form of the person authorised to perform the functions of the state or local self-government and the Procedure for filling out and submitting the declaration of the person authorised to perform the functions of the state or local self-government (n 53).

56 Ibid.

## 4.2 Liability for violation of the rules for submitting a declaration by a civil servant

Civil servants may be subject to disciplinary, administrative, and criminal liability for failure to submit or submission of false information in the declaration. Information on persons who have been prosecuted for corruption or corruption-related offences shall be entered in the Unified State Register of persons who have committed corruption or corruption-related offences (Register of Corrupt Persons).<sup>57</sup> This portal contains information on all individuals and legal entities that have committed corruption offences ; NACP has been administering this register since February 2019. The matter will go further by detailing each type of responsibility.

1) *Disciplinary responsibility.* If inaccurate information is stated in the declaration, which differs from reliable information in the amount of up to 100 subsistence minimums for non-disabled persons (author's note – as of 07/01/2022, this is the equivalent of 8887 US dollars or 8552 Euros)<sup>58</sup>, the subject disciplinary measures may be applied. A person who has committed a corruption offence , or an offense related to corruption but the court has not imposed a penalty on him or imposed a penalty as deprivation of the right to hold certain positions or engage in certain activities related to performing functions of the state or local self-government, or similar to this activity, is subject to disciplinary action by the procedure established by law.<sup>59</sup>

2) *Administrative responsibility.* According to Part 4 of Article 172-6 of the Code of Ukraine on Administrative Offences <sup>60</sup>, the submission of knowingly false information in the declaration entails the imposition of a fine from 1,000 to 2,500 non-taxable minimum incomes of citizens (n.t.m.i.s.) (note of the author – as of 07/01/2022, 1,000 n.t.m.i.s. is the equivalent of 581 US dollars or 559 Euros)<sup>61</sup>. Liability under this article for the submission of knowingly inaccurate information in the declaration regarding property or another object of declaration that has value arises if such information differs from reliable information by an amount of 100 or more (author's note – as of 01.07.2022 this is the equivalent of 8,887 US dollars or 8,552 Euros)<sup>62</sup> to 500 living wages for non-disabled persons.

3) *Criminal liability.* Currently, two articles in the Criminal Code of Ukraine provide liability for non-submission or improper submission of a declaration by public servants: Article 366-2 "Declaration of false information"<sup>63</sup> and Article 366-3 "Failure by the subject of the declaration to submit the declaration of the person allowed to execute functions of the state or local self-government".<sup>64</sup> Liability under Article 366-2 begins with the submission of knowingly inaccurate information in the declaration regarding property or another object of

57 'Unified State Register of Persons Who Committed Corruption Or Corruption-related Offenses' (*Natsionalne ahentstvo z pytan zapobihannia koruptsii*) <<https://corruptinfo.nazk.gov.ua/>> accessed 23 July 2022.

58 The official exchange rate of the hryvnia against foreign currencies (n 11); The Law of Ukraine No 1928-IX 'On the State Budget of Ukraine for 2022' of December 2, 2021 <<https://zakon.rada.gov.ua/laws/show/1928-20#Text>> accessed 23 July 2022.

59 On Prevention of Corruption (n 44).

60 Code of Ukraine on administrative offenses (Articles 1–212-24) No 8073-X of 7 December 1984 <<https://zakon.rada.gov.ua/laws/show/80731-10#Text>>.

61 The official exchange rate of the hryvnia against foreign currencies (n 11); On the State Budget of Ukraine for 2022 (n 57).

62 Ibid.

63 Criminal Code of Ukraine No 2341-III of 4 April 2001 <<https://zakon.rada.gov.ua/laws/show/2341-14#Text>> accessed 23 July 2022.

64 Ibid.

declaration, which has a value or such information differs from reliable information in the amount of 500 subsistence minimums for non-disabled persons (author's note – as of 01.07.2022 is the equivalent of 44,435 US dollars or 42,760 Euros).<sup>65</sup>

In addition, until recently, the Criminal Code of Ukraine contained Arts. 366-1 “Declaration of false information” and 368-2 “Illegal enrichment”, which at least posed a serious threat to corrupt officials; explore their other qualities further.

Art. 368-2 provided for the following composition of the crime:

Acquisition by a person allowed to perform the functions of the state (in that case and occupies a responsible position or a responsible position) or local self-government, in the ownership of assets in a significant amount, the legality of the grounds for the acquisition of which is not confirmed by evidence, as well as its transfer of such assets to any other person.

Art. 366-1 provided for the following composition of the crime:

Submission by the subject of the declaration of knowingly false information in the declaration of a person authorized to perform the functions of the state or local self-government, provided for by the Law of Ukraine “On Prevention of Corruption”, or the deliberate failure of the subject of the declaration to submit the said declaration.<sup>66</sup>

The subjects of the declaration are persons who, under the first and second parts of Article 45 of the Law of Ukraine “On Prevention of Corruption”,<sup>67</sup> are required to submit a declaration of a person authorised to perform state or local self-government functions. Moreover, the responsibility under Article 366-1 for the submission by the subject of the declaration of knowingly inaccurate information in the declaration regarding property or another object of declaration that has a value arises if such information differs from the reliable information in the amount of more than 250 subsistence minimums for non-disabled persons (author's note – as of 01 July 2022, this is the equivalent of 22,219 US dollars or 21,380 Euros).<sup>68</sup>

Why did Articles 366-1 and 368-2 existed until recently? Let us continue the research and answer this question.

### 4.3 Some decisions of the constitutional court of ukraine: mitigation of responsibility and levers of the fight against corruption

On 27 October 2020, at the request of 47 People's Deputies of Ukraine, the Constitutional Court of Ukraine adopted Decision No. 13-p/2020,<sup>69</sup> which is recognised as inconsistent with the Constitution of Ukraine (are unconstitutional): many articles of the Law of Ukraine “On Prevention of Corruption” regarding the operation of the State Register of electronic declarations and formation of NAPC; and Article 366-1 of the Criminal Code of Ukraine. The court's reasoning regarding cancelling Article 366-1 was the disproportionality of the punishment and the crime committed. The court recognised the norms as unconstitutional and became invalid from the day of their adoption. Thus, court disoriented the work of one of the key state bodies in the fight against NAPC and the prevention of corruption.

65 The official exchange rate of the hryvnia against foreign currencies (n 11); On the State Budget of Ukraine for 2022 (n 57).

66 Criminal Code of Ukraine (n 62).

67 On Prevention of Corruption (n 44).

68 The official exchange rate of the hryvnia against foreign currencies (n 11); On the State Budget of Ukraine for 2022 (n 57).

69 Constitutional Court of Ukraine 2020 <<https://ccu.gov.ua/docs/2962>> accessed 23 July 2022.

According to the NAPC, as of October 27, 2020, they were conducting 110 criminal proceedings, within which detectives were investigating about 180 facts of deliberate entry of false information by officials into the declarations:

Seven persons, including three former people's deputies, were notified of suspicion. They sent 34 cases to court. About 13 persons, there are court decisions (six verdicts, about seven persons, the cases were closed on non-rehabilitative grounds). Because of the decision of the Constitutional Court of Ukraine, all these cases must be closed. Therefore, officials exposed for abuses will avoid responsibility.<sup>70</sup>

Regarding the absence of postponement of the entry into force by repealing the provisions recognised as unconstitutional in Decision 13-p/2020, the Venice Commission notes that the Constitutional Court did not use its competence provided for in Article 91 of the Law "On the Constitutional Court", which empowers the Court to set a deadline for its implementation by the legislative body in the decision. The Constitutional Court established such three months, for example, in its decision No. 11-r/2020 of September 16, 2020, which declared some provisions of the law as unconstitutional. establishing the NACB, noting that he does this "because of the need to ensure the proper functioning of the National Anti-Corruption Bureau of Ukraine." Although the NAPC is also an anti-corruption body, the same was not done by the Court in Decision No. 13-p/2020, because of which the decision took effect from the moment it was promulgated, and therefore many anti-corruption cases were immediately closed, and court decisions in criminal cases issued based on Article 366-1 of the Criminal Code of Ukraine were cancelled.<sup>71</sup>

The Venice Commission additionally noted Decision 13-p/2020. Not all systems of constitutional justice allow such a delay in the execution of a decision on unconstitutionality. However, if the authority to temporarily suspend the effect of the ruling on unconstitutionality exists, the Venice Commission usually advocates such a delay in the entry into force of the decisions of the constitutional courts to avoid legal gaps and legal uncertainty because of the repeal of legal norms.<sup>72</sup>

Moreover, one more, not so distant but also worthy of attention decision of the Constitutional Court of Ukraine is anti-corruption. On February 29, 2019, at the request of 59 People's Deputies of Ukraine, the Constitutional Court of Ukraine adopted Decision No. 1 r/2019<sup>73</sup>, declaring Article 368-2 of the Criminal Code of Ukraine as unconstitutional. The court's reasoning was because Article 368-2 contradicted Article 62 of the Constitution of Ukraine<sup>74</sup> and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 11 of the Universal Declaration of Human Rights: which provides for the presumption of innocence and the right not to prove one's innocence, but Article 368-2 forced the accused to prove his innocence.

As a response to several criminal articles aimed at fighting corruption, cancelled by the Constitutional Court of Ukraine, the Parliament of Ukraine adopted laws that introduced two new articles into the Criminal Code of Ukraine, which are currently in force and aimed at expanding the tools for punishing corrupt officials, in particular for non-submission or

70 Sofia Sereda, 'Closed declarations and unpunished corrupt officials: what consequences will the decision of the Constitutional Court have for Ukraine?' (*Radio Svoboda*, 29 October 2020) <<https://www.radiosvoboda.org/a/rishennia-ksu-i-borotba-z-korupcijeju/30917567.html>> accessed 23 July 2022.

71 Venice Commission, 'Urgent Opinion on the Reform of the Constitutional Court' (Venetsiiska komisiiia 2020) CDL-AD(2020)039 <<https://rm.coe.int/urgent-opinion-of-the-vc-on-the-reform-of-constitutional-court-uk/1680a116c9>> accessed 22 July 2022.

72 Ibid.

73 Constitutional Court of Ukraine 2019 <<https://ccu.gov.ua/docs/2487>> accessed 22 July 2022.

74 Constitution of Ukraine No 254k/96-VR of 28 June 1996 <<https://zakon.rada.gov.ua/laws/show/254k/96-#Text>> accessed 22 July 2022.

improper submission of declarations by civil servants: Article 366-2 “Declaration of false information”<sup>75</sup> and Article 366-3 “Non-submission by the subject of the declaration of the person allowed to perform the functions of the state or local self-government”<sup>76</sup>.

The restoration of criminal responsibility for improper submission of declarations by civil servants, due to the introduction of Articles 366-2 and 366-3 to the Criminal Code of Ukraine, initially did not have a sanction in the form of deprivation of liberty in contrast to the repealed Article 366-1, but only a small one, as the maximum punishment, limitation of will. This only occurred after civil society<sup>77</sup> and the European Union<sup>78</sup> criticised such changes for establishing relatively soft sanctions in their view. Repeated amendments to these articles were initiated and carried out, which entered into force on 21 July 2021, and then the maximum sanction in the form of imprisonment appeared: in Article 366-2, up to two years; in Article 366-3, up to one year.<sup>79</sup> However, this is all a mitigation, since the threshold of the amount of hidden income, after which criminal prosecution is possible, has increased from 250 to 500 subsistence minimum incomes for non-disabled persons (author’s note – as of 07 January 2022, this is equivalent to 44437 US dollars or 20624 Euros;<sup>80</sup> the threshold of the amount, after which deprivation of liberty is possible, has also increased from 250 to 2,000 subsistence minimum incomes of a non-disabled person (author’s note – as of 07 January 2022, this is equivalent to 177,748 US dollars or 17,104 Euros).<sup>81</sup>

#### 4.4 Declaration of cryptocurrencies by civil servants: statistical data

Here are the statistics taken from the Unified State Register of Declarations,<sup>82</sup> and only as of 1 January 2021, because there is no complete data for 2021. As far as anyone knows, they are not going to show up quickly. This is because from 24 February 2022, they have imposed martial law on the entire territory of Ukraine,<sup>83</sup> and the requirement for the mandatory annual submission of declarations by civil servants was removed until its termination. After that, an additional three months has been given for its submission.<sup>84</sup> Also, during the period

75 Criminal Code of Ukraine (n 62).

76 Ibid.

77 ‘Parliament Supports “Compromise” Law on Liability for False Declarations’ (*Transparency International Ukraine*, 4 December 2020) <<https://ti-ukraine.org/en/news/parliament-supports-compromise-law-on-liability-for-false-declarations/>> accessed 23 July 2022.

78 ‘Ukraine’s Law on Asset Declarations Has Several Deficiencies, EU Says’ (*Unian*, 8 December 2020) <<https://www.unian.info/politics/legislation-ukraine-s-law-on-asset-declarations-has-several-deficiencies-11248694.html>> accessed 23 July 2022.

79 Criminal Code of Ukraine (n 62); The Law of Ukraine No 1576-IX ‘On Amendments to the Code of Ukraine on Administrative Offenses, the Criminal Code of Ukraine on Improving Liability for Declaring Unreliable Information and Failure to Submit by the Declaring Subject a Declaration of a Person Authorized to Perform the Functions of the State or Local Self-Government’ of 29 June 2021 <<https://zakon.rada.gov.ua/laws/show/1576-20#Text>> accessed 23 July 2022.

80 The official exchange rate of the hryvnia against foreign currencies (n 11); On the State Budget of Ukraine for 2022 (n 57).

81 Ibid.

82 Entrance to the system (n 51).

83 About the introduction of martial law in Ukraine (n 2); On the approval of the Decree of the President of Ukraine “On the introduction of martial law in Ukraine”(n 2).

84 NASK of Ukraine, ‘Regarding the application of certain provisions of the Law of Ukraine “On Prevention of Corruption” regarding financial control measures under martial law (declaration submission, notification of significant changes in property status, notification of opening a foreign currency account in a non-resident bank institution, conducting inspections)’ (*NASK of Ukraine*, 7 March 2022) <<https://nazk.gov.ua/uk/documents/roz-yasnennya-4-vid-07-03-2022-shhodo-zastosuvannya-okremyh-polozhen-zakonu-ukrayiny-pro-zapobigannya-koruptsiyi-stosovno-zahodiv-finansovogo-kontrolyu-v-umovah-voyennogo-stanu-podannya-deklaratsiyi-p/>> accessed 20 July 2022.



of martial law or a state of war, full checks of declarations and control measures regarding the correctness and completeness of filling out the declaration are not carried out.<sup>85</sup>

Since the beginning of implementation, the state policy was aimed at legalising cryptocurrencies in Ukraine, which relatively speaking began in 2016,<sup>86</sup> with the submission to the Parliament of Ukraine of the first draft laws in this area. The situation with the declaration of cryptocurrencies by public servants, which are allegedly in their possession, has also changed. Table 2 shows the dynamics from 2016 to 2020 regarding government officials' declared ownership of Bitcoin (BTC) by government officials.

**Table 2.** Dynamics of BTC ownership declarations by government officials in 2016–2020<sup>87</sup>

№	Date	Number of BTC holders' officials, (persons)	Increase to the previous year, (%)	Increase by 2016, (%)
1	01.01.2016	25	0	0
2	01.01.2017	58	132	132
3	01.01.2018	71	22	184
4	01.01.2019	424	497	1596
5	01.01.2020	652	54	2508

The analysis shows that the significant annual growth in the previous year ranged from 22 % to 497 %. The most significant jump of 497 % occurred between 2018 and 2019. Considering the growth at the beginning of 2016, it has an almost cosmic growth rate. From 2016 to 2020, it was 2508 %. In actual numbers, this amounted to 652 declarants against 25 declarants at the beginning of 2016, i.e., an increase of 627 declarants – civil servants who allegedly gained BTC.

*Declarations of civil servants for 2020.* The campaign for civil servants to declare their property status for 2020 has a leading position not only in terms of the number of people who declared cryptocurrency but also in terms of the number and amount of their inclusion. 791,872 government employees filed returns, of which 652 declared cryptocurrency in their assets, as shown in Table 2. Table 3 provides an analysis of which cryptocurrencies government employees invested in 2020.

85 NASK of Ukraine, 'Regarding the application of certain provisions of the Law of Ukraine "On Prevention of Corruption" regarding financial control measures under martial law (declaration submission, notification of significant changes in property status, notification of opening a foreign currency account in a non-resident bank institution, conducting inspections)' (n 83); The Law of Ukraine No 2115-IX 'On protection of the interests of subjects submitting reports and other documents during the period of martial law or a state of war' of 3 March 2022 <<https://zakon.rada.gov.ua/laws/show/2115-20#Text>> accessed 24 July 2022.

86 Ministry of Digital Transformation / Virtual asset (n 26).

87 Entrance to the system (n 51); 'Telegram: Contact @OpendatabotChannel' <<https://t.me/OpendatabotChannel>> accessed 24 July 2022.

**Table 3.** The structure of investments in cryptocurrency by government officials in 2020, according to the results of the declaration for 2020<sup>88</sup>

Nº	Name cryptocurrency	Amount, (persons)	Relation to total (%)
1	Bitcoin Gold	1	0,16
2	Bitcoin Cash	3	0,47
3	MIOTA	10	1,55
4	Monero	13	2,02
5	Stellar	18	2,80
6	ADA	18	2,80
7	Litecoin	27	4,19
8	Ethereum	157	24,38
9	Bitcoin	397	61,65
*	Total amount	644	100

The analysis shows that BTC (61.65 %) has the largest share among cryptocurrencies in which government officials invested in 2020. Next, let us find out which institutions the civil servants who declared BTC in their 2020 declarations worked for and present these results in Table 4.

**Table 4.** Distribution of owners (civil servants) of BTC by place of work in state bodies, according to the results of the declaration for 2020<sup>89</sup>

Nº	State agency	Number of people	Relation to total (%)
1	City Council	77	11,81
2	National Police	58	8,90
3	Ministry of Defense	38	5,83
4	District councils	38	5,83
5	Prosecutor's Office	29	4,45
6	Parliament of Ukraine	24	3,68
7	Regional councils	20	3,07
8	Regional councils	17	2,61
9	Others	351	53,83
10	Total amount	652	100

The analysis shows that the largest holders of BTCs work in city councils, the national police, the Ministry of Defense, district councils, and the prosecutor's office.

This data further individualises data regarding BTC owners by identifying the ten richest state officials, their positions, and places of work in the state bodies of Ukraine. However, this paper does not mention their names as this does not significantly affect the overall study. Although

88 Entrance to the system (n 51); NASK of Ukraine, 'Regarding the application of certain provisions of the Law of Ukraine "On Prevention of Corruption" regarding financial control measures under martial law (declaration submission, notification of significant changes in property status, notification of opening a foreign currency account in a non-resident bank institution, conducting inspections)' (n 83).

89 Ibid.

the open functioning of the Unified State Register of Declarations and the Law of Ukraine “On Prevention of Corruption” gives us such a right. The obtained results are presented in Table 5.

**Table 5.** Individualisation of the ten largest owners (civil servants) of BTC according to the results of the declaration for 2020<sup>90</sup>

№	State agency	Job title	Number of BTC owned	The equivalent of the cost of BTC on 01 April 2021	
				Dollar USA	Euro
1	Dnipro City Council	Deputy	18000	1 056 929 400	898 075 800
2	Ministry of Foreign Affairs of Ukraine	The first secretary of the Embassy of Ukraine in Vietnam	6528	383 313 062	325 702 157
3	Odesa Regional Council	Deputy Chairman of the Odesa Regional Council of the 8th convocation	5328	312 851 102	265 830 437
4	Parliament of Ukraine	People's Deputy of Ukraine	4256	249 905 085	212 345 034
5	City Council	Deputy of the city council	3493	205 103 022	174 276 598
6	Odesa City Council	Deputy of Odesa City Council	1318	77 390 719	65 759 106
7	Uzhhorod City Council	Deputy of the Uzhhorod City Council	826	48 501 316	41 211 701
8	Kyiv City Council	Deputy of the Kyiv City Council	398	23 369 883	19 857 454
9	State Geology and Subsoil Service of Ukraine	Deputy head of the State Geology and Subsoil Service of Ukraine	380	22 312 954	18 959 378
10	Valkivska District State Administration	Head of the Valkivska district state administration	322	18 907 293	16 065 578
*	Total amount	*	40849	2 398 583 837	2 038 083 242

Some conclusions can be made by a nalyzing the data in Table 5. Since, according to the 2020 declaration, 652 government officials own 46,351 BTC, it can be concluded that out of 46,351 BTC, 40,849 BTC or 88.1 %, are owned by ten government officials. Next, let us present the aggregation of BTCs by groups of their owners in Table 6.

90 Entrance to the system (n 51); 'Cryptocurrency quotes Bitcoin - Bitcoin for the past periods' (*Investing.com*) <<https://ru.investing.com/crypto/bitcoin/historical-data?cid=1057388>> accessed 24 July 2022; NASK of Ukraine, 'Regarding the application of certain provisions of the Law of Ukraine "On Prevention of Corruption" regarding financial control measures under martial law (declaration submission, notification of significant changes in property status, notification of opening a foreign currency account in a non-resident bank institution, conducting inspections)' (n 83).

**Table 6.** Aggregation of BTC by groups of their owners (civil servants) according to the results of the declaration for 2020<sup>91</sup>

№	The group under investigation	The number of state officials studied		Number of BTC owned	
		Number of people	Relation to total (%)	Number of BTC	Relation to total (%)
1	Top ten largest owners of BTC	10	2	40849	88
2	The second ten largest owners of BTC	10	2	1805	4
3	The third ten largest owners of BTC	10	2	903	2
4	Other BTC holders	622	95	2794	6
*	Total amount	652	100	46351	100

The analysis shows that the first 30 of the 652 government officials who declared the most BTC in 2020 collectively own 94 % of all declared BTC, that is, 43557 of 46351 BTC.

#### 4.5 The beginning of the fight against the declaration of cryptocurrencies as a potential tool for money laundering by corrupt people

The NAPC has launched a review of officials who have declared owning cryptocurrency in their 2020 tax return . In particular, Serhiy Petukhov, the head of NAPC's mandatory full inspections department, announced this on his Facebook page:

Bitcoins in declarations for 75 billion hryvnias (author's note – as of 04/07/2021, this is the equivalent of 2 billion 564 million US dollars or 2 billion 348 million euros<sup>92</sup>) – how to check it? Indeed, this year we see significantly more cryptocurrencies in declarations. But we were ready for this, and at the beginning of the year, NAPC indicated in its Explanations that cryptocurrencies must be declared as intangible assets in Section 10 of the declaration, indicating the type of crypto (Bitcoin, Ethereum, etc.), the date of acquisition and the total value of the acquired asset as of the date acquisition. When checking the declaration, we will see whether the declarant owns the specified number of crypto tokens, whether the money for its purchase was transferred, and whether the declarant can explain the origin of the money spent on the purchase of tokens. If you have doubts about the authenticity of the specified data regarding the crypto, or whether the declarant has sufficient funds for its purchase, write a statement to the NAPC stating the facts, we can take such a declarant for verification. We have already started 250 checks this year and some of them are already checking declared bitcoins. If we find that the specified information about ownership of cryptocurrency is unreliable, this is grounds for administrative or criminal liability.<sup>93</sup>

This post on Facebook is dated April 8, 2021, as a reaction of NAPC to the indignant post of April 7, 2021, on the Telegram channel of the Deputy Prime Minister, Minister of Digital

91 Entrance to the system (n 51); NASK of Ukraine, 'Regarding the application of certain provisions of the Law of Ukraine "On Prevention of Corruption" regarding financial control measures under martial law (declaration submission, notification of significant changes in property status, notification of opening a foreign currency account in a non-resident bank institution, conducting inspections)' (n 83).

92 The official exchange rate of the hryvnia against foreign currencies (n 11).

93 Sergiy Petukhov, 'Facebook. Bitcoins in declarations for 75 billion hryvnias – how to check it?' (Facebook, 8 April 2021) <<https://www.facebook.com/sergiy.petukhov/posts/2898994357042851>> accessed 25 July 2022.

Transformation of Ukraine Mykhailo Fedorov, already mentioned at the beginning of this work<sup>94</sup> on corruption and cryptocurrency in declarations.

#### *4.5.1 Cryptocurrency validation mechanism in declarations: NAPC*

Let us continue to analyse the chronology of the implementation of mechanisms for checking cryptocurrencies in the declarations of civil servants as a potential tool for laundering their income. Indeed, on the peculiarities of declaring cryptocurrencies, the Law of Ukraine from 02.10.2019 № 140-XI amended paragraph 6 of part one of article 46 of the Law of Ukraine “On Prevention of Corruption”<sup>95</sup>:

Intangible assets belonging to the subject of the declaration or members of his family, including objects of intellectual property that can be valued in monetary terms, cryptocurrencies. Information on intangible assets includes data on the type and characteristics of such assets, the value of assets at the time of ownership, as well as the date of ownership.<sup>96</sup>

As seen, they only reduce the declaration requirements for cryptocurrencies to display 1. Type and characteristics; 2. Cost; 3. The date of origination of the right to them. The laws of Ukraine do not require other information, such as other evidence about the places of storage of such assets, the right to own them, their history of origin, and so on .

NAPC, in our opinion, tried to correct this provision with its Order No. 449/21<sup>97</sup> and Explanation No. 11 of the NAPC dated 12 September 2021,<sup>98</sup> i.e. two days before the start of the new income declaration campaign for 2021 which runs from 01 January 2022 to 04 January 2022. Why did it fail? In short, it should reflect all this in Article 46 of the Law of Ukraine “On Prevention of Corruption” in order to not contradict it or expand it independently (which is unconstitutional). Otherwise, they have no legal force, as reflected only in Order No. 449/21 and Explanation No. 11, and contradict the Law of Ukraine “On Prevention of Corruption”. Also, as can be understood, the NAPC did not have enough time for the start of the new campaign for the declaration of income in 2021.

The legislation of Ukraine is a system of normative legal acts and international treaties Ukraine formed on a hierarchical basis. A regulatory legal act is an official document adopted (issued) by an entity authorised to do so in the form and procedure defined by law, which establishes legal norms for an unspecified circle of persons and is designed for repeated use. Law is a normative legal act adopted by the Parliament of Ukraine or an all-Ukrainian referendum, which regulates the most important social relations by establishing the status, universally binding rules of conduct of the subjects of such relations, and liability for violations of these rules. The laws of Ukraine have the highest

94 About us. Ministry of Digital Transformation of Ukraine (n 9); Fedorov (n 10).

95 The Law of Ukraine No 140-IX ‘On Amendments to Certain Legislative Acts of Ukraine on Ensuring the Effectiveness of the Institutional Mechanism for the Prevention of Corruption’ of October 2, 2019<<https://zakon.rada.gov.ua/laws/show/140-20#Text>> accessed 25 July 2022.

96 On prevention of corruption (n 44).

97 On approval of the declaration form of the person authorised to perform the functions of the state or local self-government, and the Procedure for filling out and submitting the declaration of the person authorised to perform the functions of the state or local self-government (n 53).

98 NASK of Ukraine, ‘Clarification on the application of certain provisions of the Law of Ukraine “On Prevention of Corruption” in relation to financial control measures (declaration submission, notification of significant changes in property status, notification of opening a foreign currency account)’ (NASK of Ukraine, 29 December 2021) <[https://wiki.nazk.gov.ua/wp-content/uploads/2021/12/1111\\_compressed.pdf](https://wiki.nazk.gov.ua/wp-content/uploads/2021/12/1111_compressed.pdf)> accessed 25 July 2022.

legal force after the Constitution of Ukraine and are adopted based on the Constitution of Ukraine and must correspond to it.<sup>99</sup>

This opinion is confirmed by the preamble of Explanation No. 11: ‘it provided these explanations to ensure the uniform application of the Law regarding financial control measures, considered as recommendations and does not contain new legal norms.’<sup>100</sup>

It is important to understand what Order No. 449/21 contains, and what it recognises as lacking in Article 46 of the Law of Ukraine “On Prevention of Corruption” for these norms to have an indisputable legal force. Section IV “Rules for filling out sections of the declaration”, in point 11 contains the following requirements:

“In section 10 “Intangible assets”: 3) information on cryptocurrency includes data on the type of object; identifier in the system of circulation of virtual assets; amount and value of cryptocurrency; date of acquisition; a provider of services related to the circulation of cryptocurrency; the person to whom the object belongs (the subject of the declaration and/or members of his family). Information identifying the cryptocurrency and the person to whom it belongs, as well as the amount of cryptocurrency, the date of acquisition, and its value, must be specified.<sup>101</sup>

Explanation No. 11 recognises the deficiencies in Article 46 of the Law of Ukraine “On Prevention of Corruption” for these norms to have indisputable legal force:

The amount of a certain type of cryptocurrency can change because of its exchange (conversion) for other types of cryptocurrencies. To confirm the change in the quantity that occurred because of a set of trade (exchange) operations, it is worth keeping the history of the relevant transactions;

The presence of a “public address” of a cryptocurrency makes it possible to track the previous dates of transactions and the amount of cryptocurrency purchased on those dates. In addition, the subject of the declaration can confirm the date of acquisition of cryptocurrency through the history of relevant transactions;

In the field “Identifier in the system of circulation of virtual assets (public address)”, the public address of the cryptocurrency, the so-called public (public) key, must be specified. The presence of a public address characterises any cryptocurrency owned by a person.;

In the field “Information about the provider of services related to the circulation of cryptocurrency”, the name of the cryptocurrency exchange should be shown.<sup>102</sup>

<sup>99</sup> Constitution of Ukraine (n 73).

<sup>100</sup> NASK of Ukraine, ‘Regarding the application of certain provisions of the Law of Ukraine “On Prevention of Corruption” regarding financial control measures under martial law (declaration submission, notification of significant changes in property status, notification of opening a foreign currency account in a non-resident bank institution, conducting inspections)’ (n 83).

<sup>101</sup> On approval of the declaration form of the person authorised to perform the functions of the state or local self-government, and the Procedure for filling out and submitting the declaration of the person authorised to perform the functions of the state or local self-government (n 53).

<sup>102</sup> ‘Order of filling. Section XII of the declaration: Intangible assets’ (*Ofitsiina baza znan NAZK*, 30 December 2021) <<https://wiki.nazk.gov.ua/category/deklaruvannya/hii-nematerialni-aktyvy/>> accessed 25 July 2022.

#### 4.5.2 State financial monitoring service of Ukraine

The State Financial Monitoring Service of Ukraine has reported on its performance in 2022. Among the measures taken by the agency were those focused on cryptocurrencies.<sup>103</sup>

According to the report, the State Financial Monitoring Service of Ukraine, together with the team of the Ministry of Digital Transformation, as well as “key crypto experts of Ukraine”, worked to identify a list of Russian bitcoin exchanges associated with sanctioned banks to block their hosting completely.<sup>104</sup>

In addition, a “mechanism of spontaneous blocking” of Russian wallets was launched in cooperation with cryptocurrency providers. The State Financial Monitoring Service of Ukraine reported that it had addressed the Binance exchange “with specific proposals for actions to curb Russian aggression in the virtual asset market.”

‘[After reviewing it], Binance changed its policy and, on 20.03.2022, excluded the possibility of P2P transactions for a number of Russian banks and payment systems that were included in the sanctions list. In addition, other practical measures have been implemented to block Russian crypto assets and transactions of Russian residents’, the report says.<sup>105</sup>

Representatives of the State Financial Monitoring Service, as part of the events held in November-December 2022 in Vienna (Republic of Austria), organised with the assistance of the OSCE and the UNODC, were actively involved in the discussion of the taxonomy. Vienna (Republic of Austria), organised with the assistance of the OSCE and the United Nations Office on Drugs and Crime (UNODC), was actively involved in discussions on the definition of a taxonomy of virtual acts, regulatory activities of the virtual asset market, sectoral risk assessment of the virtual asset sector, current tools and technical capabilities for investigating virtual transactions and coverage of an overview of international and national legislation in the field of virtual assets.<sup>106</sup>

To further develop the national anti-money laundering system, the State Financial Monitoring Service of Ukraine, together with the OSCE, UNODC and other stakeholders, will continue active cooperation within the framework of the project “Innovative policy solutions to reduce money laundering risks associated with virtual assets”.<sup>107</sup>

On 29 December 2022, the State Financial Monitoring Service of Ukraine held the fourteenth meeting of the Council on Prevention and Counteraction to Legalization (Laundering) of the Proceeds of Crime, Terrorist Financing and Financing of the Proliferation of Weapons of

103 ‘Information on the results of the State Financial Monitoring Service for 2022’ (*State Financial Monitoring Service of Ukraine*, 18 January 2023) <<https://fiu.gov.ua/pages/dijalnist/funkcional/news/Informuvannya-pro-rezultati-roboti-derzhfinmonitoringu-za-2022-rik.html>> accessed 25 January 2023.

104 State Financial Monitoring, ‘Information on the Results of the State Financial Monitoring for 2022’ (*Facebook*, 18 January 2023) <<https://www.facebook.com/FIU.Ukraine/posts/pfbid03ohyxd1Y2DqwA6QwkURAXngX6bHxiT6jk1pEzjTTmt5tYwoqYLnBo5byHdc18JGl>> accessed 1 February 2023.

105 ‘Information on the results of the State Financial Monitoring Service for 2022’ (*ForkLog*, 19 January 2023) <<https://forklog.com.ua/derzhfinmonitoring-rozpoviv-pro-identyfikatsiyu-bitkoyin-obminnykiv-rf-ta-vzayemodiyu-z-binance/>> accessed 25 January 2023.

106 ‘Derzhfinmonitoring Talked About Interaction with Binance’ (*Facebook*, 22 December 2022) <<https://www.facebook.com/FIU.Ukraine/posts/pfbid0254LA4YcyUBrp2R2AVpiMfiRZQcmoAhU38dSaR7fk5iUVUbdAA2iUuyhMhwKPr7xl>> accessed 1 February 2023.

107 ‘Representatives of the State Financial Monitoring took part in activities within the framework of the project “Innovative political solutions to reduce money laundering risks related to virtual assets”’ (*Facebook*, 22 December 2022) <<https://fiu.gov.ua/pages/dijalnist/funkcional/news/Predstavnyky-Derzhfinmonitorynhu-vzialy-uchast-u-zakhodakh-v-ramkakh-proektu-Innovatsiini-politychni-rishennia-shchodo-zmenshennia-ryzykiv-z-vidmyvannia-hroshei,-poviazanykh-z-virtualnymy-aktyvamy.html>> accessed 1 February 2023.

Mass Destruction (hereinafter – Laundering) in the format of a video conference. During the meeting, the members of the Council discussed key aspects of the laundering system under martial law, as well as the issues of improving the legislation on the creation of the Unified Register of Accounts of Individuals and Legal Entities and Individual Bank Safes as a single state information system and the state of regulatory and legal support for the formation of comprehensive administrative reporting in the field of laundering.<sup>108</sup>

### 4.5.3 National agency of Ukraine for asset recovery and management (NAUARM)

In 2022, NAUARM began cooperation with several cryptocurrency exchanges to exchange information. They also noted that the agency establishes the existence of digital assets in the hands of the defendants only within the framework of criminal proceedings. This includes cooperation with Binance, Coinbase, KuCoin, Kraken, and WhiteBit.<sup>109</sup>

This makes it possible to obtain the identification data of the cryptocurrency wallet owner, in particular: an identity document; email address; IP address; name and IMEI of the device used to log in to the cryptocurrency exchange account; information about the transaction; availability of additional cryptocurrency wallets and bank accounts through which cryptocurrency wallets are replenished; account numbers to which funds are withdrawn, etc.<sup>110</sup>

In addition, interaction with cryptocurrency exchanges allows us to additionally establish the existence of digital and virtual assets of the persons involved in criminal proceedings. It contributes to the efficiency of interaction with law enforcement agencies to provide additional information for the seizure of the identified cryptocurrency assets.

NAUARM, together with experts, has developed recommendations on the identification, tracing and seizure of cryptocurrency assets in criminal proceedings. The guidelines disclose the main provisions of the organisation of criminal proceedings, which include operations using cryptocurrency wallets, methods of preparation for certain procedural actions, ways to detect software related to the use of virtual currencies for criminal purposes, their main identifiers, and also highlight the legal aspects of seizing virtual currency wallets used in criminal activities.<sup>111</sup>

The guidelines include six sections and contain up-to-date information on ways to detect software required for the use of virtual currencies and on the search for stored passwords,

108 'Representatives of the State Financial Monitoring took part in the events within the framework of the project "Innovative Political Solutions to Reduce Money Laundering Risks Related to Virtual Assets"' (Facebook, 28 December 2022) <<https://www.facebook.com/FIU.Ukraine/posts/pfbid0zrgcTdSt7p9DnCvKh4f4J3mPXnBBct2Xs7wVQsX9DfATjWr3B2eBRoS9CzXqKil/>> accessed 1 February 2023.

109 'A meeting of the Council on preventing and countering the legalization (laundering) of criminal proceeds, the financing of terrorism and the financing of the proliferation of weapons of mass destruction was held' (ForkLog, 7 December 2022) <<https://forklog.com.ua/eksperty-z-ukrayiny-obgovoryly-regulyuvannya-ta-konfiskatsiyu-virtualnyh-aktyviv-z-obsye/>> accessed 25 January 2023; 'Experts from Ukraine Discuss Virtual Assets Regulation at OSCE-UNODC Joint Workshop' (OSCE, 7 December 2022) <<https://www.osce.org/oceea/533732>> accessed 25 January 2023.

110 'ARMA Establishes Cooperation with the World's Leading Crypto Exchanges' (APMA, 15 November 2022) <<https://arma.gov.ua/news/typical/arma-nalagodjue-spivrobitnitstvo-z-providnimi-kriptobirjami-svitu>> accessed 25 January 2023; 'ARMA of Ukraine Cooperates with Exchanges to Identify Owners of Crypto Wallets' (ForkLog, 16 November 2022) <<https://forklog.com.ua/arma-ukrayiny-nalagodylo-kontakt-z-birzhamy-dlya-identyfikatsiyi-vlasnykiv-kryptogamantsiv/>> accessed 25 January 2023.

111 ARMA Establishes Cooperation with the World's Leading Crypto Exchanges (n 109); ARMA of Ukraine Cooperates with Exchanges to Identify Owners of Crypto Wallets (n 109).



including their most common forms and places of storage. In addition, the guidelines provide samples of petitions for searches and seizure of property submitted by law enforcement agencies to the court. The developed guidelines allow for streamlining the algorithm of actions, thus increasing the effectiveness of measures to identify, search and seize cryptocurrency assets.

Also, following a proactive approach to the formation of state policy and the implementation of best international practices in the field of asset tracing, including cryptocurrency, NAUARM has addressed international organisations working in the field of asset tracing and recovery with a proposal to familiarise themselves with the practice of Ukraine, share their approaches and join the development of a study in this area.<sup>112</sup>

NAUARM has initiated consultations with international organisations : Interpol and Europol; global asset recovery networks: Camden Asset Recovery Inter-Agency Network (CARIN) and Stolen Asset Recovery Initiative (StAR); regional asset recovery networks; Asia-Pacific, South Africa, East Africa, West Africa and the Caribbean; platform of asset recovery institutions of the European Union Member States. This platform for discussing the NAUARM Recommendations brings together more than 150 jurisdictions. This will facilitate the exchange of experience between specialised institutions and the resolution of several problematic issues faced by authorised institutions in the area of tracing, immobilisation and subsequent seizure of cryptocurrencies. In addition, NAUARM looks forward to establishing a dialogue with foreign partners for further possible joint actions in this area.<sup>113</sup>

## 4.6 Generalization of the result

Only until 15 March 2022, that is, before the adoption of Law 2074, which legalised cryptocurrencies, the latter did not have a defined legal status and a legally established mechanism for confirming their ownership. Many civil servants took advantage of this, declaring them as property against the absence of a legal field, thus causing society to suspect money laundering. This is because declaring a cryptocurrency does not exclude the possibility of the fictitiousness of such actions aimed at laundering the income received from corruption. This is because the fortunes of most of the declarants – state employees, based on their salary level, did not allow them to purchase the declared cryptocurrency worth millions of US dollars.

On 27 October 2020, the Constitutional Court of Ukraine adopted decision No. 13-r/2020, in which it cancelled a number of anti-corruption instruments. In particular, the Constitutional Court invalidated Article 366-1 of the Criminal Code, which established criminal liability for failure to submit a declaration or submission of knowingly inaccurate information by the subject of the declaration. This decision led to the closure of criminal proceedings in cases related to the declaration of false information about the property or the failure to submit a declaration at all, which was pending at that time. Only the administrative responsibility related to the declaration of inaccurate information about the property or the failure to submit a declaration remained. The Parliament of Ukraine subsequently introduced new similar sanctions, but time was lost, leading to negative consequences. In fact, it was an amnesty for civil servants who had previously submitted information to their declarations, even if it was unreliable. The information about the presence of cryptocurrencies in the hands of

112 ARMA Establishes Cooperation with the World's Leading Crypto Exchanges (n 109).

113 'ARMA Has Developed Recommendations on the Search and Seizure of Cryptocurrency Assets' (ARMA, 24 April 2020) <<https://arma.gov.ua/news/typical/arma-rozrobilo-rekomendatsii-z-rozshuku-ta-areshtu-kriptoalyutnih-aktiviv>> accessed 25 January 2023.

government officials was not an exception to such information. These declared fortunes were likely to be obtained from corruption, taking into account the imbalance between the low level of salaries of officials and the level of declared fortunes in cryptocurrency. Even after the reintroduction of two criminal articles (366-2 and 366-3) on 30.12.2020, which provide for the composition of the crime similar to the repealed article 366-1, it became impossible to bring civil servants to justice for previously committed crimes in the field of corruption. Since, in accordance with Article 58 of the Constitution of Ukraine, adopted laws and regulatory acts do not have a retroactive effect in time, in our case, it is until December 30, 2020 (the date of adoption of new sanctions).

As of December 30, 2020, the restoration of criminal liability for improper submission of declarations by civil servants, due to the introduction of Articles 366-2 and 366-3 to the Criminal Code of Ukraine, initially did not have a sanction in the form of deprivation of liberty, but only as a maximum punishment, restriction of liberty. Only after repeated amendments were made to these articles, which entered into force on July 21, 2021, the maximum sanction in the form of imprisonment appeared: in Article 366-2, up to two years; in Article 366-3, up to one year. However, interestingly, much more brutal introductions occurred after the 2020 declaration campaign ended on April 1, 2021 which made it possible to declare 46,351 bitcoins for the year 2020 to public servants, which as of April 01, 2020, amounted to almost 2 billion 564 million US dollars or 2 billion 348 million euros. This happened almost against the background of the absence of effective penalties in the legislation since the maximum that threatened corrupt officials (it can be assumed that such exist, based on the imbalance in their level of wages and stated wealth) was a fine. Even the limitation of their will could not be applied to them, as those who are attracted for the first time, as the most severe of list of punishments available until 21 July 2021 (or extremely rare).

Article 46 of the main anti-corruption Law of Ukraine “On Prevention of Corruption” contains meagre requirements regarding the declaration of cryptocurrencies by public servants and is reduced only to the mandatory display of 1. Type and characteristics; 2. Costs; 3. The date of origination of the right to them. That is, the laws of Ukraine do not require other information, such as other evidence about the places of storage of such assets, the right to own them and their history of origin. What gives the law enforcement agency a small toolkit for investigating the corruption component in their acquisition? An attempt to correct this deficiency was Order No. 449/21 and Explanation No. 11 issued by the NACP on the procedure for filling out the declaration of civil servants. These regulatory documents supposedly clarify and reveal the concepts of “types and characteristics” mentioned more broadly by the Law of Ukraine “On Prevention of Corruption”, in particular regarding the disclosure of the additionally established requirements for the following designation: a) “Identifier in the system of circulation of virtual assets (public address)”; b) “History of transactions”; c) “Information about the provider of services related to the circulation of cryptocurrency.” But in doing so, the NACP has greatly overstepped its mandate. Thus, they went beyond the legal provisions of Article 46 of the Law of Ukraine, “On Prevention of Corruption”, in their explanations before completing the declarations. Thereby making it likely that their decisions will be recognized as illegitimate in the courts of Ukraine or international courts. However, it should be emphasised that such rules are useful and should be contained not in the order № 449/21 and clarification № 11 of the NACP but directly in the Law of Ukraine “On Prevention of Corruption” to have unshakable legal force.

## 5 CONCLUSIONS AND RECOMMENDATIONS

It is necessary to consider the experience of Ukraine, which demonstrated a new way of possible money laundering through the declaration of cryptocurrencies before their

legalisation . This requires the development and adoption of preventive norms in the current legislation of other countries before the legalisation of cryptocurrencies.

An ill-considered and incomplete legislative policy of the state in the fight against money laundering in the process of the legalisation of cryptocurrencies (namely, before the legalisation of cryptocurrencies) can actually lead to the so-called tacit amnesty of previously declared cryptocurrencies received from corruption and other illegal activities.

A promising direction for further development of the study of the phenomenon is the use of cryptocurrencies in general and in particular in the declarations of public officials for money laundering, and the detection and counteraction to this should continue in the following areas: 1) improving the existing mechanisms of prevention and combating; 2) the development (experimentation) of new mechanisms that should meet the ever-increasing challenges of the FinTech industry and criminal schemes of their use. The experience of Ukrainian state institutions in combating money laundering with the use of cryptocurrencies: NAUARM's experience of cooperation with Binance, Coinbase, KuCoin, Kraken, and WhiteBit; practical and theoretical developments of cryptocurrency checks in NAPC declarations; preventive measures from the State Financial Monitoring Service of Ukraine and NAPC – can be implemented in the global community seeking to prevent money laundering.

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