

Serhii Hrytsai¹

Prospects for introducing the concept of “digital things” and “digital content”: expanding the scope of regulation of virtual assets

Introduction

If we say that we want to achieve the status of the most digital country in the world for Ukraine, we must follow all the trends. We must be the first, not the last. We see the role of the digital state during the war: it became the foundation for other services: the economy, customs, and social services. Digitalization is the foundation. It creates new trends: this statement was made at the end of 2022, in an exclusive interview with the Interfax-Ukraine news agency by the Vice Prime Minister of Digital Transformation of Ukraine².

Rostyslav Shurma, deputy head of the Presidential Office, said that “maximum involvement of all parties” is needed to regulate the industry: “Today we must focus our efforts on working together to introduce a virtual asset market in Ukraine”³.

¹ Ph.D. Associate Professor at the Department of Sectoral Law and General Legal Disciplines, Institute of Law and Social Relations of the Open International University of Human Development “Ukraine”; frick1745826@gmail.com; ORCID ID: <https://orcid.org/0000-0003-0051-6149>.

² *Nam neobkhidno nehaino zavershyty lehalizatsiiu virtualnykh aktyviv v Ukraini – vitse-premier Fedorov* [We need to immediately complete the legalization of virtual assets in Ukraine – Deputy Prime Minister Fedorov], Interfaks-Ukraina, <https://interfax.com.ua/news/interview/875292.html> (access: 29.11.2022).

³ *V Ofisi prezydenta zaklykaly skontsentruvaty zusyillia dlia zapusku rynku kryptovalut v Ukraini* [The President’s Office called for concentrated efforts to launch a cryp-

But without looking at the process of forming the legislative framework in Ukraine, what can we say about the absence of a transparent legal field in general; according to the global analytical online publication Chainalysis, in 2022, Ukraine ranked third among world leaders in the use of cryptocurrencies. In terms of the sum of indicators, it is ahead of the tech giants: The US ranks 5th, China ranks 10th, and the UK ranks 17th⁴.

In 2020, Ukraine ranked tenth in the ranking of 25 countries with the highest profits from bitcoin transactions. Ukraine's average profit from bitcoin transactions in 2020 reached USD 400 million. The Netherlands, Canada, and Vietnam had a similar level of profit. The top places in the ranking were taken by the United States with USD 4.1 billion, and China with USD 1.1 billion. USA, second - China with 1.1 billion USD, third - Japan with 900 million USD. The third place was taken by Japan with USD 900 mln. They are followed by the United Kingdom, Russia, Germany, France, Spain, and South Korea⁵.

Literature review and output conditions

On February 17, 2022, the Parliament of Ukraine adopted the Law of Ukraine "On Virtual Assets" No. 2074-IX (hereinafter – Law 2074)⁶, which was signed by the President of Ukraine on March 15, 2022. This law fully legalizes 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

tocurrency market in Ukraine]. ForkLog, <https://forklog.com.ua/v-ofisi-prezydenta-zaklykaly-skontsentruvaty-zusylyya-dlya-zapusku-rynku-kryptovalyut-v-ukrayini/> (access: 2.12.2022).

⁴ Team Chainalysis, *2022 Global Cryptocurrency Adoption Index*, Chainalysis (blog), <https://blog.chainalysis.com/reports/2022-global-crypto-adoption-index/> (access: 14.09.2022).

⁵ Team Chainalysis, *Bitcoin Gains by Country: Who Benefited the Most from the 2020 Boom?*, Chainalysis (blog), <https://blog.chainalysis.com/reports/bitcoin-gains-by-country-2020/> (access: 8.06.2021).

⁶ *Pro virtualni aktyvy* [About virtual assets], Pub. L. No. 2074- IX (2022), <https://zakon.rada.gov.ua/go/2074-20>.

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 fulfill 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 Ukraine⁷ on 13.03.2022⁸.

Since the adoption of the Law 2074 by the Parliament of Ukraine on February 17, 2022 and until the period of 2023, significant events have taken place. They have significantly affected the plans of the Parliament of Ukraine to launch mandatory amendments to the Tax Code of Ukraine provided for in the Draft Law 7150 and simultaneously enact Law 2074 starting from October 1, 2022.

Among such influential events is the fact that on June 23, 2022, Ukraine became a candidate for membership in the European Union. At the same time, the European Union has significantly updated the Crypto Asset Market Regulation (MiCA)⁹. Therefore, the relevant Law 2074 regulating virtual assets needs to be adapted to existing European regulatory mechanisms, including the Markets in Crypto Assets Regulation (MiCA).

European regulators first mentioned the need to regulate crypto asset markets (hereinafter referred to as Markets in Crypto-Assets Regulation or MiCA) shortly after Facebook launched Libra stablecoin. The French finance minister said a few minutes after the project's launch that Libra would never become a sovereign currency and would require reliable consumer protection. The bankruptcies of FTX, Terra, and Celsius

⁷ *Podatkovyi kodeks Ukrainy* [Tax Code of Ukraine], Pub. L. No. 2755– VI (2010), <https://zakon.rada.gov.ua/go/2755-17>.

⁸ *Proekt Zakonu Pro vnesennia zmin do Podatkovoho kodeksu Ukrainy shchodo opodatkovannia operatsii z virtualnymi aktyvamy* [Draft Law on Amendments to the Tax Code of Ukraine on Taxation of Transactions with Virtual Assets], no. 7150, Verkhovna Rada Ukrainy (2022), <https://itd.rada.gov.ua/billInfo/Bills/Card/39211>.

⁹ *Digital Finance: Agreement Reached on European Crypto-Assets Regulation (MiCA)*, European Council, <https://www.consilium.europa.eu/en/press/press-releases/2022/06/30/digital-finance-agreement-reached-on-european-crypto-assets-regulation-mica/> (access: 30.06.2022).

Network have strengthened the authorities' resolve. Europe has determined that existing legislation cannot be applied to most crypto assets and their providers. Therefore, a new one was created to regulate crypto and the activities of crypto companies¹⁰.

The Council adopted its negotiating mandate on the Markets in Crypto Assets Regulation (MiCA) on November 24, 2021. Negotiations between the co-legislators began on March 31, 2022 and ended with an interim agreement reached on October 05, 2022¹¹. On October 5, 2022, EU lawmakers approved the text of the Markets in Crypto Assets Regulation (MiCA) bill¹², which will become the basis for the regulation of cryptocurrencies in the European Union. And on October 10, members of the European Parliament's Economic and Monetary Affairs Committee adopted a draft law on cryptocurrency regulation, thus supporting the MiCA regulation and all relevant provisions.

The European MiCA Regulation should be the basis for the new version of the Law of Ukraine "On Virtual Assets". The first edition (and based on the existing new European trends, we are sure that there will be subsequent ones) of the Law of Ukraine "On Virtual Assets", which was adopted on 15.03.2022, has become an indicator that in the future Ukrainian companies and international investors will be able to work legally in Ukraine. That is, the activities of all kinds of crypto institutions, exchanges, exchanges, startups, will be carried out within the legal framework of the state. And in turn, the state will protect virtual assets owned by institutions, businesses, and citizens from all kinds of illegal encroachments. But at this stage, the Law of Ukraine "On Virtual Assets" is still more declarative in nature. And it will unleash its potential only after it is brought in line with the MiCA regulations, and after the creation and approval of bylaws. We are talking about changes that need to be

¹⁰ *Yaki zakony budut diiaty dlia yevropeiskykh kryptovalutnykh kompanii cherez rik?* [What laws will apply to European cryptocurrency companies in a year?], Gagarin News, <https://gagarin.news/ua/news/how-mica-regulation-will-change-the-european-crypto-sphere/> (access: 20.01.2023).

¹¹ *Digital Finance*.

¹² Council of the European Union, *Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-Assets, and Amending Directive (Eu) 2019/1937*, Pub. L. No. 13198/22, 380 (2022), <https://data.consilium.europa.eu/doc/document/ST-13198-2022-INIT/en/pdf>.

introduced both to the Law of Ukraine “On Virtual Assets” and to a number of existing satellite laws, including, among other things, changes to the Tax Code of Ukraine, as well as the development of new departmental instructions and orders of ministries and agencies in accordance with the law. The cryptocurrency ecosystem that is being attempted to be created in Ukraine, which is intended for interaction between the state and foreign and domestic crypto business investors, is currently only at the stage of its formation.

Aims and Methods

To conduct a study of the reasons, principles and prospects for introducing the concepts of “digital things” and “digital content” laid down in draft laws No. 6447 and No. 6576 as initiatives that are satellites to the specialized law on virtual assets. The research goal required an in-depth study of its individual components, for which the study is divided into a number of stages in order to form the necessary sequence of conclusions. The study was based on the analysis of the legal framework of Ukraine, the European Union and other international acts, including those ratified by the Parliament of Ukraine.

The methodological basis of the study includes a combination of philosophical, general scientific and special legal methods of scientific knowledge. The following system of methods of scientific cognition was used in the course of the study: general scientific – deduction and induction, synthesis and analysis, scientific abstraction, analogy, analytical and dialectical, systematic approach; special – legal methods of cognition, such as formal legal, legal forecasting, retrospective and comparative legal method, method of comparison, systemic and structural; methodological substantiation of the essence, nature and structure of the terminology which is the object of the study.

The chosen research methodology meets the tasks set and contributes to the creation of an optimal structure of the conclusions obtained and allowed to identify the main problems.

Other methods used in the study include: the general philosophical (universal) method of cognition was used at all stages of the cognitive process; the Aristotelian method was useful in analyzing the content of

current legislation on the legal nature of the research object, explaining the problems of their provision in terms of legislative technique in the relevant regulations.

Results and discussion

In connection with Ukraine's acquisition of the status of a candidate for EU membership, the norms of domestic legislation, including those on virtual assets, should be adapted to European standards, including the MiCA Regulation.

The National Institute for Strategic Studies, against the background of the analysis of the Law of Ukraine "On Virtual Assets" in the context of Ukraine's acceptance as a candidate for membership in the European Union, noted among a number of key issues that need to be addressed at the current stage of development to streamline the circulation of virtual assets in Ukraine: classification and analysis of crypto-assets in accordance with international and European regulations and standards in accordance with their main characteristics and economic goals. A detailed analysis of the classification of different categories of virtual assets is necessary to ensure proper regulation and control in accordance with their characteristics and risks. Based on the analysis of various virtual assets, it is advisable to establish requirements for the markets of those virtual assets that are not currently subject to Ukrainian legislation. In international practice, the most common classification of virtual assets refers to securities assets, payment assets intended for use as a means of payment, and utility assets intended to provide digital access to programs or services¹³.

In addition, the National Institute for Strategic Studies, in order to address the priority problems, including the one we have mentioned above, in the field of regulating the circulation of virtual assets in Ukraine, recommended that it is advisable to create a working group to develop and

¹³ D.I. Oliinyk, *Obigh virtualjnykh aktyviv v Ukrajinii* [Circulation of virtual assets in Ukraine], Natsionalnyi instytut stratehichnykh doslidzhen [National Institute of Strategic Studies], <http://niss.gov.ua/doslidzhennya/ekonomika/obih-virtualnykh-aktyviv-v-ukrayini>, p. 6.

harmonize the regulatory framework necessary for the implementation of the Law of Ukraine “On Virtual Assets” in order to create a progressive model for regulating the circulation of virtual assets in Ukraine, involving the competent authorities, in particular the National Securities and¹⁴.

Advisory Board

As reported by the Government Portal, on 17.11.2022, the National Securities and Stock Market Commission established an advisory council to obtain high-quality expertise and professional assessment in the area of virtual assets implementation. The main task of the Council is to develop and approve a draft law on amendments to the Tax Code of Ukraine regarding the peculiarities of taxation of transactions with virtual assets and amendments to the Law of Ukraine “On Virtual Assets”. The Council will also coordinate other issues related to the regulatory regulation of activities in the virtual assets market. The Council will include representatives of specialized authorities, leading market experts and other interested parties. The Commission is interested in the opinions of all parties to the process, so it is ready for an open and constructive dialog¹⁵.

The first meeting of the Advisory Council on the Regulation of Virtual Assets (hereinafter referred to as the Advisory Council), organized by the National Securities and Stock Market Commission (hereinafter referred to as the NSSMC), was held on December 01, 2022. The event was attended by representatives of the Office of the President, management and specialists of the NSSMC, specialists of the National Bank of Ukraine, representatives of the deputy corps, specialized bodies, leading market experts and other participants. During the meeting, the participants discussed the importance of a quick launch of the virtual asset market in Ukraine and the areas of activity, reviewed the European MiCA (Markets in Crypto assets) Regulation. They also familiarized

¹⁴ Ibidem.

¹⁵ *Kabinet Ministriv Ukrainy – Profesiyni dialog: NKCPFR stvoryla konsultatsiynu radu z pytan rehuliuвання virtualnykh aktyviv* [Cabinet of Ministers of Ukraine – Professional dialogue: NKCPFR has created an advisory board on the regulation of virtual assets], 2022, Uriadovyi portal, <https://www.kmu.gov.ua/news/profesijnij-dialog-nkcpfr-stvorila-konsultacijnu-radu-z-pitan-reguluyannya-virtualnih-aktiviv>.

themselves with the already developed amendments to the articles on the scope of application, definition of terms of the basic law “On Virtual Assets” and the concept of taxation¹⁶.

Based on the results of the meeting of the Advisory Council on December 01, 2022, the NSSMC reported on its official website on December 27, 2022: “The Advisory Board has begun discussing and developing legislative changes necessary to launch the crypto asset market in Ukraine. The first draft of the bill is planned to be prepared by the end of January 2023. Currently, the Council’s experts are considering the European MiCA Regulation, the principles of which should form the basis of the draft law and be implemented in the national regulatory framework. In particular, this week they will discuss and collect proposals and comments on licensing and conditions of service providers (Section II of the MiCA Regulation). In addition, the issue of virtual assets that are not asset-linked tokens and electronic money tokens will be proposed for consideration in the near future (Section III of the MiCA Regulation)¹⁷.

Rostyslav Shurma, Deputy Head of the Office of the President of Ukraine, said during the meeting of the Advisory Board: “Today we must focus our efforts on joint work to introduce a virtual asset market in Ukraine. We have a responsible body, the National Securities and Stock Market Commission, which is already actively working with international partners and specialized authorities. But there should be maximum involvement of all parties in this process, because we are working for results right now”¹⁸.

¹⁶ *Vidbulos pershe zasidannia Konsultatsiinoi rady z pytan rehuliuвання virtualnykh aktyviv* [The first meeting of the Advisory Council on the Regulation of Virtual Assets was held], 2022, Natsionalna komisiia z tsinnykh paperiv ta fondovoho rynku [National Securities and Stock Market Commission], <https://www.nssmc.gov.ua/vidbulos-pershe-zasidannia-konsultatsiinoi-rady-z-pytan-rehuliuвання-virtualnykh-aktyviv/>.

¹⁷ *Konsultatsiina rada z pytan rehuliuвання virtualnykh aktyviv prystupyla do rozrobky zmin v profilnyi zakon* [The Advisory Council on the Regulation of Virtual Assets has started drafting changes to the relevant law], 2022, Natsionalna komisiia z tsinnykh paperiv ta fondovoho rynku [National Securities and Stock Market Commission]. <https://www.nssmc.gov.ua/konsultatsiina-rada-z-pytan-rehuliuвання-virtualnykh-aktyviv-prystupyla-do-rozrobky-zmin-v-profilnyi-zakon/>.

¹⁸ *Kabinet Ministriv Ukrainy – Vidbulos pershe zasidannia Konsultatsiinoi rady z pytan rehuliuвання virtualnykh aktyviv* [The Cabinet of Ministers of Ukraine – The first meeting

“The Commission is actively working with international colleagues from Ernst & Young, with the support of the USAID Financial Sector Reform project, and other relevant authorities to implement the European MiCA regulation in the Ukrainian virtual asset market. And we are grateful for the results we have today and the expertise we have received. It is these joint developments that will form the basis for key amendments to the main law on virtual assets and the Tax Code of Ukraine”, said Ruslan Magomedov, Chairman of the NSSMC.

In his turn, MP Yaroslav Zheleznyak noted:

Our committee and I are ready to support and assist the Commission’s team in working on legislative and tax changes to launch the virtual asset market in Ukraine. The goal is simple – to make crypto circulation in Ukraine legal and safe, but on a “do no harm” basis, so that the market will not be overregulated, but will receive incentives for development and competitive advantages. This is an important step forward for our country both from an economic and international perspective¹⁹.

Bill drafts

In early 2023, the Parliament of Ukraine adopted two draft laws as a basis: the draft Law on Amendments to the Civil Code of Ukraine²⁰; and the draft law on digital content and digital services²¹. These draft laws expand the scope of civil rights objects and are aimed at regulating the use

of the Advisory Council on Regulation of Virtual Assets was held], 2022, Uriadovyi portal, <https://www.kmu.gov.ua/news/vidbulos-pershe-zasidannia-konsultatsiinoi-rady-z-py-tan-rehuliuвання-virtualnykh-aktyviv>.

¹⁹ *Kabinet Ministriv Ukrainy – Vidbulos pershe zasidannia Konsultatsiinoi rady z pytan rehuliuвання virtualnykh aktyviv* [The Cabinet of Ministers of Ukraine – The first meeting of the Advisory Council on Regulation of Virtual Assets was held], 2022.

²⁰ *Proekt Zakonu pro vnesennia zmin ta dopovnen do Tsyvilnoho kodeksu Ukrainy, spryamovanykh na rozshyrennia kola obektiv tsyvilnykh prav* [Draft Law on Amendments and Additions to the Civil Code of Ukraine aimed at expanding the range of civil rights objects], no. 6447, Verkhovna Rada Ukrainy, 2021, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73472.

²¹ *Proekt Zakonu pro tsyfrovyi kontent ta tsyfrovi posluhy* [Draft Law on Digital Content and Digital Services], no. 6576, Verkhovna Rada Ukrainy, 2022, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73687.

of virtual assets and digital content by including them in the objects of civil law to which the regulations of the Civil Code will apply. Both draft laws were developed as part of the implementation of the acts of the EU institutions (in this case, Law 2074 and related ones) into national legislation (in the context of this study, it is MiCA) in accordance with the provisions of the EU-Ukraine Association Agreement²². Information on the implementation of the Association Agreement is available on the website of the Government Office for Coordination of European and Euro-Atlantic Integration²³. The Government Office is the main body that, according to the Resolution of the Cabinet of Ministers of Ukraine No. 759 of 21.07.2020²⁴ responsible for the implementation of tasks in the field of European and Euro-Atlantic integration and the implementation of the Association Agreement.

In the first reading at the plenary session on January 12, 2023, 273 and 261 MPs voted for the adoption of the relevant bills No. 6447 and No. 6576, respectively, Interfax-Ukraine reports²⁵.

The adoption of the draft laws is an important step in the process of legalizing crypto and virtual assets, said Yaroslav Zheleznyak, a member of the Voice faction, in the session hall before the vote. “Very briefly. We need a draft law (No. 6447) because we will legalize crypto and virtual assets: without changes to the Civil Code, this will be quite wrong”, the MP explained. According to him, the introduction of the conceptual categories of “virtual assets” and “digital content” is the right step that all countries that want to be called civilized and advance in the field of IT are now taking.

²² *Uhoda pro asotsiatsiiu mizh Ukrainoiu, z odniiiei storony, ta Yevropeiskym Soiuzom, Yevropeiskym spivtovarystvom z atomnoi enerhii i yikhnimy derzhavamy-chlenamy, z inshoi storony* [Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand], Pub. L. No. 984_011, 2014, https://zakon.rada.gov.ua/go/984_011.

²³ *Association Agreement*, European Integration portal, 2023, <https://eu-ua.kmu.gov.ua/en/association-agreement>.

²⁴ *Pro Uriadovyi ofis koordynatsii yevropeiskoi ta yevroatlantychnoi intehtratsii* [About the Government Office for the Coordination of European and Euro-Atlantic Integration], Pub. L. No. 759, 2017, <https://zakon.rada.gov.ua/go/759-2017-%D0%BF>.

²⁵ Telegram: Contact @yzheleznyak, *I vazhlyvi zminy u tomu chysli dlja rozvytku kryptoaktyviv v Ukraini* [And important changes, including for the development of cryptoassets in Ukraine], <https://t.me/yzheleznyak/3274> (access: 12.01.2023).

“Virtual digital goods have long been a part of everyday reality, they are exchanged, and therefore legal relations exist, so the issue needs to be regulated at the legislative level”, said Serhiy Alekseev, a member of the European Solidarity faction, before the vote²⁶.

Draft law No. 6447, proposal to define the concept of “digital things”

As stated in the explanatory note to the Draft Law No. 6447, its purpose is to objectively determine the need to expand the list of civil rights objects with intangible goods that are in circulation only in digital form and in respect of which civil rights and obligations may arise, in order to legislate the basic regulatory provisions for the legal regulation of their civil turnover. The Draft Law No. 6447 provides for amendments to the Civil Code of Ukraine, in particular Articles 115, 177, 179, which define digital things among other objects of civil rights, their essence as an object of the digital environment that is in circulation only in digital form and in respect of which civil rights and obligations may arise, and also outlines the range of digital things, which are virtual assets, digital content, online accounts, money and securities that exist exclusively in digital form and extends to digital things the legal regime of material things, unless otherwise provided by this Code, other laws or follows from the essence of a digital thing²⁷.

Table 1 illustrates the proposed amendments to the current provisions of Ukrainian legislation by Draft Law No. 6447.

²⁶ *Rada shvalyly dva zakonoproiekty pro lehalizatsiiu virtualnykh aktyviv* [The Council approved two draft laws on the legalization of virtual assets], *BiznesTsenzor*, https://biz.censor.net/news/3393140/rada_shvalyly_dva_zakonoproiekty_pro_legalizats_virtualnykh_aktyviv (13.01.2023); Telegram: Contact @yzheleznyak, op. cit. (access: 12.01.2023).

²⁷ *Proekt Zakonu pro vnesennia zmin ta dopovnen do Tsyvilnoho kodeksu Ukrainy, spriamovanykh na rozshyrennia kola ob'ektiv tsyvilnykh prav* [Draft Law on Amendments and Additions to the Civil Code of Ukraine aimed at expanding the range of civil rights objects], no. 6447, Verkhovna Rada Ukrainy 2021.

Table 1. Comparative Table to the Draft Law of Ukraine No. 6447 “On Amendments to the Civil Code of Ukraine Aimed at Expanding the Range of Objects of Civil Rights”

Current version	Wording with the proposed changes Draft law No. 6447
Civil Code of Ukraine	
<p>Article 115. Property of a business entity</p> <p>1. A business entity is the owner of:</p> <ol style="list-style-type: none"> 1) property transferred to it by members of a company as a contribution to the authorized (share) capital 2) products produced by a company as a result of economic activity 3) income received; 4) other property acquired on the grounds not prohibited by law. <p>2. Contribution to the authorized (share) capital of a business entity may be money, securities, other things or property or other alienable rights having monetary value, unless otherwise provided by law.</p> <p>Monetary valuation of a contribution of a member of a business entity shall be carried out with the consent of the members of the company, and in cases established by law, it shall be subject to independent expert verification.</p>	<p>Article 115. Property of a business entity</p> <p>1. A business entity is the owner of:</p> <ol style="list-style-type: none"> 1) property transferred to it by members of a company as a contribution to the authorized (share) capital 2) products produced by a company as a result of economic activity 3) income received; 4) other property acquired on the grounds not prohibited by law. <p>2. Contribution to the authorized (share) capital of a business entity may be money, securities, other things or property or other alienable rights having monetary value, unless otherwise provided by law.</p> <p>Monetary valuation of a contribution of a company member is carried out with the consent of the company members, and in cases established by law, it is subject to an independent expert review.</p> <p>3. Virtual assets may not be contributed to the authorized (share) capital.</p>
<p>Article 177. Types of objects of civil rights</p> <p>1. The objects of civil rights are things, including money and securities, other property, property rights, results of work, services, results of intellectual and creative activity, information, as well as other tangible and intangible goods.</p>	<p>Article 177. Types of objects of civil rights</p> <p>The objects of civil rights are material and digital things, including money, securities, other property, property rights, results of work, services, results of intellectual and creative activity, information, as well as other tangible and intangible goods.</p>
<p>Article 179. Concept of a thing</p> <p>1. A thing is an object of the material world in respect of which civil rights and obligations may arise.</p>	<p>Article 179. Concept of a thing</p> <ol style="list-style-type: none"> 1. A material thing is an object of the material world in respect of which civil rights and obligations may arise. 2. A digital thing is an object of the digital environment that is in circulation only in digital form and in respect of which civil rights and obligations may arise. Digital things are a virtual asset, digital content, online account, money and securities that exist exclusively in digital form. 3. The provisions of this Code on tangible things shall apply to digital things, unless otherwise provided by this Code, other laws or follows from the nature of the digital thing.

Source: *Proekt Zakonu pro vnesennia zmin ta dopovnen do Tsyvilnoho kodeksu Ukrainy, spriamovanykh na rozshyrennia kola ob'ektiv tsyvilnykh prav* [Draft Law on Amendments and Additions to the Civil Code of Ukraine aimed at expanding the range of civil rights objects], no. 6447, Verkhovna Rada Ukrainy 2021.

Draft Law No. 6576, proposal to define the concept of “digital content”

In May 2019, the European Parliament and the Parliament of Ukraine adopted Directive 2019/770 on digital content and digital services supply contracts, which enters into force for EU Member States on January 1, 2022. By signing the Association Agreement with the European Union, Ukraine must ensure the gradual adaptation of Ukrainian legislation to the EU *acquis*. One of the directions of which is to strengthen economic and trade relations by creating a deep and comprehensive free trade area, including intangible objects, which include digital content.

The purpose of the Draft Law, as stated in the explanatory note to it, is to objectively determine the need to model the legal regulation of civil law relations between the contractor and the consumer regarding the provision of digital content and/or digital services on the basis of a contract, as well as to legislate effective legal tools for protecting the rights of consumers who receive digital content and/or digital services²⁸.

The provisions of the related draft law No. 6576 define the scope of civil legal relations, set out subjective and objective criteria for the compliance of digital content (services) with the terms of the contract, and establish the legal consequences of failure to provide digital content (services) under the contract, as well as the non-compliance of the content (services). In addition, the grounds and legal consequences of withdrawal from the contract under which the digital content (service) is provided are determined²⁹.

Table 2 illustrates the proposed amendments to the current provisions of Ukrainian legislation by Draft Law No. 6576.

²⁸ *Proekt Zakonu pro tsyfrovyyi kontent ta tsyfrovi posluhy* [Draft Law on Digital Content and Digital Services], no. 6576, Verkhovna Rada Ukrainy 2022.

²⁹ *Rada skhvalyla dva zakonoproiektu pro lehalizatsiiu virtualnykh aktyviv* [The Council approved two draft laws on the legalization of virtual assets]; Telegram: Contact @ yzheleznyak, op. cit. (access: 12.01.2023).

Table 2. Comparative Table to the Draft Law of Ukraine “On Digital Content and Digital Services” No. 6576

Current version	Wording with the proposed changes Draft law No. 6447
Civil Code of Ukraine	
Article 177. Types of objects of civil rights 1. The objects of civil rights are things, including money and securities, other property, property rights, results of works, services, results of intellectual and creative activity, information, as well as other tangible and intangible benefits.	Article 177. Types of objects of civil rights 1. The objects of civil rights are things, including money, securities, other property, property rights, results of work, services, results of intellectual and creative activity, digital content , information, as well as other tangible and intangible benefits.
The Law of Ukraine “On Payment Services”	
Article 1: Definition of basic terms 1. In this Law, the following terms shall be used in the following meanings: 95) digital content - goods or services that are created and delivered (provided) exclusively in electronic form, consumed with the use of technical (digital, electronic) devices and do not involve the use or consumption of physical goods or services;	Article 1: Definition of basic terms 1. In this Law, the following terms shall be used in the following meanings: 95) digital content - any information, including information and data in digital form, regardless of whether they are objects of intellectual property rights;

Source: *Proekt Zakonu pro tsyfrovyyi kontent ta tsyfrovi posluhy* [Draft Law on Digital Content and Digital Services], no. 6576, Verkhovna Rada Ukrainy 2022.

Conclusions and recommendations

1. Summarizing, we can conclude that Draft Law No. 6447 introduces into the legislation the definition of a “digital thing” that is in circulation only in digital form; these include virtual assets, digital content, online accounts, money and securities that exist exclusively in digital form. Prior to the amendments envisaged by Draft Law No. 6447, the existing legal framework that defines the concept of certain types of digital things in one way or another can be noted: The Law of Ukraine “On Virtual Assets”, the Law of Ukraine “On Prevention and Counteraction to Legalization (Laundering) of Proceeds of Crime, Terrorist Financing and Financing of the Proliferation of Weapons of Mass Destruction”, the Law of Ukraine “On Capital Markets and Organized Commodity Markets”. However, none of these legal acts has a comprehensive and inclusive definition. Thus, the introduction of the Draft Law No. 6576, if adopted, is likely to facilitate potential consumers to protect their rights to digital content, online accounts, virtual assets, even money and securities that exist exclusively in digital form.

2. As for the Draft Law No. 6576, at the time of its development, Ukraine had no legal regulation of the provision of digital content and/or digital services under a contract. Its adoption will ensure the implementation of Directive 2019/770 of the European Parliament and of the Council into the national legislation of Ukraine. In addition, it will contribute to consumer protection and its effective implementation within the framework of the contract for the provision of digital content and/or digital services, thereby contributing to the formation of the market for the said digital good.

3. Comparing the concepts of “digital thing” and “digital content” proposed by Draft Laws No. 6447 and No. 6576, the following conclusions can be drawn: on the one hand, “digital thing” is a comprehensive concept, and “digital content” is included in it according to clause 2 of Article 179 of the Civil Code of Ukraine (as amended by Draft Law No. 6447); but on the other hand, based on subparagraph 95 of paragraph 1 of Article 1 of the Law of Ukraine “On Payment Services” (as amended by Draft Law No. 6576), the very concept of “digital content” is itself an all-inclusive concept:

any information, including information and data in digital form, regardless of whether they are objects of intellectual property rights,

and very similar in essence in terms of the definition of “digital things” it includes:

is an object of the digital environment that is in circulation only in digital form

Thus, in law enforcement activities, it will be very difficult to find the correct definition of other components of digital things (virtual asset, online account, money and securities that exist exclusively in digital form) against the background of their possible inclusion in the concept of “digital content”, which may lead to different interpretations in judicial and human rights practice.

4. The current version of Article 177 of the Civil Code of Ukraine ends with the phrase: “as well as other tangible and intangible goods”, which means an unclear list of civil rights objects that already exist and that will be created and classified as tangible and intangible goods, even in digital form, i.e. regardless of the form of existence. Thus, the addition

of the words “digital content” to Article 177 of the Civil Code and the expansion of the concept of a thing to “material and digital things” is at least more declarative.

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Summary

The lack of a legal framework did not prevent Ukraine from ranking third among the world leaders in the use of cryptocurrencies in 2022. In terms of the sum of indicators, Ukraine is ahead of such tech giants as the United States (5th place), China (10th place), and the United Kingdom (17th place). The purpose of the study is to identify the underlying principles for the introduction of a new legal definition of “digital things” and “digital content” and their prospects for use, which are laid down in draft laws No. 6447 and No. 6576, as initiatives that are satellites to the relevant law on virtual assets. As a reminder, the Parliament of Ukraine adopted the Law of Ukraine “On Virtual Assets” No. 2074-IX on February 17, 2022. Since the adoption of Law 2074 by the Parliament of Ukraine on February 17, 2022 and until the period of 2023, significant events have taken place. They have significantly affected the plans of the Parliament of Ukraine to launch mandatory amendments to the Tax Code of Ukraine provided for in the Draft Law 7150 and simultaneously enact Law 2074 from October 1, 2022. The study was based on the analysis of the legislative framework of Ukraine, the European Union and other international acts, including those ratified by the Parliament of Ukraine. The study has led to a number of conclusions. Draft Law No. 6447 introduces the definition of a “digital thing” that is in circulation only in digital form; these include virtual assets, digital content, online accounts, money and securities that exist exclusively in digital form. Its adoption will help potential consumers to protect their rights to digital content, online accounts, virtual assets, even money and securities that exist exclusively in digital form. Comparing the concepts of “digital thing” and “digital content” proposed by draft laws No. 6447 and No. 6576, we found signs of legal tautology in determining what is primary and what is secondary. The addition of the words “digital content” to Article 177 of the Civil Code and the expansion of the concept of a thing to “material and digital things” is at least more declarative.

Keywords: fintech, virtual assets, cryptocurrency, bitcoin, electronic money, money surrogate