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AFTER THE ENTRY INTO FORCE
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Cryptocurrencies and succession law

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Types of tokens

- Crypto-assets;
- Payment tokens;
- Security tokens;
- Utility tokens;

Bitcoin: origins of the phenomenon

- Von Hayek and bancor.
- Universal unit of account able to keep up with the globalization of businesses.
- Medium of exchange alternative to the currency having legal tender whose value can not be determined through monetary policies.

Bitcoin: peculiarity

- The use of cryptographic technique for its coining (mining);
- The decentralization of the possibility to emanate new money;
- The absence of central authorities and financial institutions responsible for the control and management of the cryptocurrency creation and transmission system.

Bitcoin: functioning

- Mining: resolution of an computer problem.
- Wallet: that holds private keys
 - - paper wallet
 - - web wallet
 - - software wallet
 - - hardware wallet
- Public key: sending and receiving point for all payments (address).
- Private key: signature that allows to move digital values.

Problems

- Legal qualification.
- Applicable law.



Regulatory approaches

- No regulation.
- Soft regulation: registration with specific registers and application of the anti-money laundering regulations
 - Italy d.lgs. n. 90 of 25 May 2017;
 - V Directive UE Anti-money laundering n. 843 of 30 May 2018.
- High regulation: licence for VV activities
 - In the United States, the New York State Department of Financial service introduced in 2015 a specific licence for virtual currency exchange platforms issued if certain prudential rules relating, for example, to minimum capital, use of segregated accounts, etc. are complied with.
- Prohibition

Legal nature of bitcoin in international legal thinking

- Case SEC VS Shavers (Texas): bitcoin can be used for the purchase of goods and services (like other currencies having legal tender), therefore it is a form of money.
- US Bankruptcy Court of the Northern District of California: bitcoin is an intangible property, comparable to a patent or registered trademark.
- BaFin: bitcoin is a “unit of account” included in the category of financial instruments pursuant to § 1 (11) of the German banking law (c.d. KWG). A special license is required for exchangers because unit of account trading is a reserved activity. *Contra* Court of Appeals, Berlin, 25 September 2018.
- Court of Justice of the European Union, 22 October 2015, n. 264: for the purposes of tax regulation imposed by the VAT Directive, virtual currencies are to be treated as those charged by central banks.

Bitcoin as money

- Institutional concept of money: “can be qualified as currency only the universally accepted means of payment that is an expression of the public powers of issue and management of economic value” Cass., December 2, 2011, n. 25837.
- Functional analysis of money: it is neither a consumer good nor a “productive” good but an entity that has the only utility that to be exchanged.
- Functional notion of money: good chosen by a given community to convey internally a lasting credit and that, given its widespread acceptance, basically satisfies the two other tasks traditionally assigned to money: unit of account and reserve of value.

Bitcoin and monetary functions

- ✓ Medium of exchange.
- ? Value reserve → deflationary currency.
- ? Unit of account → it offers through the definition of its own unit of measurement, the possibility of expressing goods and services in a general reference framework making them comparable.

Italian judgments

- Arbitration award, Marcianise, 14 April 2018: «si ravvisa un rapporto di similitudine tra la fattispecie di debito di somma di moneta estera, disciplinata dall'art. 1278 c.c., e quella di debito di somme da corrispondersi pattiziamente in criptovaluta, non oggetto di specifica regolamentazione. L'Arbitro ritiene, dunque, che al fenomeno delle obbligazioni pecuniarie pattuite in criptovalute, in mancanza di esplicita disciplina legislativa espressa, debba applicarsi, analogicamente, l'art. 1278 c.c.».
- Court of Appeals, Brescia, 30 October 2018: «la crittovaluta deve essere assimilata sul piano funzionale al denaro [...] essa infatti serve come l'euro, per fare acquisti, sia pur non universalmente ma in un mercato limitato [...] la criptovaluta è quindi da considerarsi a tutti gli effetti come moneta, e cioè quale mezzo di scambio nella contrattazione in un dato mercato, atto ad attribuir valore, quale contropartita di scambio, ai beni e servizi, o altre utilità, ivi negoziati».

Bitcoin and law succession

- Art. 751 Italian Civil code: «The collation of the donated money is made by taking less of the money that is in the inheritance, according to the legal value of the given species or of the one legally substituted to it at the time of the open succession».
- EU Regulation 650/2012: ubiquity, anonymity and law applicable to the succession.

Access to funds that have fallen in succession

- Direct custody (web wallet);
- Indirect custody:
 - Provisions of the deceased regarding the fate of the private key and mortis causa transferability of passwords;
 - Smart contracts and prohibition of succession agreements.

Thank you for your kind attention



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