

Banking - Luxembourg

Latest bitcoin developments

Contributed by **NautaDutilh Avocats Luxembourg**

July 18 2014

Classification of bitcoin
Risks
Legal framework

When they first appeared on the market, bitcoins were valued at the modest amount of \$1. After this soared to a value of \$1,000 in November 2013, it has since settled at \$630 apiece. The proliferation of bitcoin users goes hand in hand with the emergence of operators providing bitcoin-related services – enabling, for instance, the exchange of bitcoins for conventional official currencies. Since the inception of bitcoin, the European Banking Authority (EBA) and the European Securities and Markets Authority have been charged with its supervision.

Classification of bitcoin

Bitcoin is a virtual currency. The acquisition of bitcoins takes place on an online exchange platform, where conventional currencies are used to purchase bitcoins. The virtual currency is then transferred to a personalised bitcoin account known as a 'digital wallet'.

Virtual currencies such as bitcoin do not fall within the scope of the EU Electronic Money Directive (2009/110/EC). In a warning to consumers on virtual currencies published on December 12 2013, the EBA defined a 'virtual currency' as:

"a form of unregulated digital money that is not issued or guaranteed by a central bank and that can act as means of payment. Virtual currencies have come in many forms, beginning as currencies within online computer gaming environments and social networks, and developing into means of payment accepted 'offline' or in 'real life'. It is now increasingly possible to use virtual currencies as a means to pay for goods and services with retailers, restaurants and entertainment venues. These transactions often do not incur any fees or charges, and do not involve a bank."

In a February 14 2014 press release, the Luxembourg financial sector regulator (CSSF) stated that "virtual currencies are considered as money, since they are accepted as a means of payment of goods and services by a sufficiently large group of people".

Risks

Virtual currencies can be acquired directly from a person who already owns them or through an exchange platform, and are therefore essentially unregulated. Further, unlike banks, the exchange platforms do not hold their virtual currencies as a deposit. Thus, in case of loss of money from an exchange platform, exchange platform malfunction or theft from a digital wallet, there is no legal protection such as that offered by traditional deposit guarantee schemes, which cover losses of funds processed on trading platforms.

In the absence of EU legislation providing for a right to reimbursement, unauthorised or erroneous transactions made from digital wallets cannot be cancelled. In addition, the exchange rates of virtual currencies are very volatile, rendering the value of bitcoins unstable. Further, there is no traceability for virtual currency transactions, which affords consumers of virtual currency a high level of anonymity. Thus, these transactions may be used for criminal purposes, such as money laundering.

Legal framework

In its February 14 2014 press release, the CSSF took an official position by clarifying the way in which it intends to deal with bitcoin-related service operators. The CSSF reiterated that no one may carry out activities in the Luxembourg financial sector without authorisation from the minister of finance and without being subject to the prudential supervision of the CSSF (Article 14 of the Law of April 5 1993 on the financial sector).

The CSSF added:

Authors

Josée Weydert



Jad Nader



Vincent Wellens



Nicolas Rase



"Therefore, the potential interested persons who would like to establish themselves in Luxembourg in order to carry out an activity of the financial sector (as, for instance, the issuing of means of payments in the form of virtual or other currencies, the provision of payment services using virtual or other currencies, the creation of a market (platform) to trade virtual or other currencies) shall define their business purpose and their activity in a sufficiently concrete and precise manner to allow the CSSF to determine for which status they need to receive the ministerial authorisation."

The CSSF thus encourages potential operators to disclose their projects in order to assess, on a case-by-case basis, which authorisation the operators must obtain. The press release demonstrates the CSSF's willingness to regulate the exercise of this new type of business.

Some countries – such as the United States and Japan – consider bitcoins to be goods as well as financial instruments. The United States is therefore looking to impose value added tax on bitcoin transactions to limit the speculative nature of bitcoin and reduce its volatility. Unlike the United States and Japan, Luxembourg has classified bitcoin as scriptural money and not a commodity that can be regulated.

In May 2014 the European Commission noted that it is closely following developments on digital and virtual currencies. The European Commission is also participating in a working group led by the EBA in order to define virtual currencies and assess whether they should and can be regulated.

For further information on this topic please contact [Josée Weydert](mailto:josee.weydert@nautadutilh.com), [Jad Nader](mailto:jad.nader@nautadutilh.com), [Vincent Wellens](mailto:vincent.wellens@nautadutilh.com) or [Nicolas Rase](mailto:nicolas.rase@nautadutilh.com) at NautaDutilh Avocats Luxembourg by telephone (+352 26 12 29 1), fax (+352 26 68 43 31) or email (josee.weydert@nautadutilh.com, jad.nader@nautadutilh.com, vincent.wellens@nautadutilh.com or nicolas.rase@nautadutilh.com). The NautaDutilh Avocats Luxembourg website can be accessed at www.nautadutilh.com.

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).

ILO is a premium online legal update service for major companies and law firms worldwide. In-house corporate counsel and other users of legal services, as well as law firm partners, qualify for a free subscription. Register at www.iloinfo.com.

Online Media Partners



© Copyright 1997-2014
Globe Business Publishing Ltd