

ZAKONSKA REGULATIVA DIGITALNE IMOVINE – PRIMJER ZAKONA O DIGITALNOJ IMOVINI REPUBLIKE SRBIJE

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Pregledni naučni rad

*Čuljević Ilda, MA iur., Općina Ilidža
Gurda Ena, MA iur., Advokatska kancelarija Amra Gurda*

Sažetak:

Predmet ovog istraživanja je zakonska regulativa digitalne imovine – primjer Zakona o digitalnoj imovini Republike Srbije.¹ Republika Srbija je jedna od prvih država koja je usvojila zakon o digitalnoj imovini i samim tim se izvukla iz “sive zone”, za razliku od mnogih drugih država, među kojima je i Bosna i Hercegovina. Ona je kao savremena država opredjeljena za integraciju u savremene međunarodne tokove.² Međutim, specifičnost uređenja države Bosne i Hercegovine je direktno implicirala donošenje i provođenje zakona u različitim pravnim oblastima.³

¹ Koju čine virtualne valute (vrsta digitalne imovine koju nije izdala i za čiju vrednost ne garantuje centralna banka, niti drugi organ javne vlasti, koja nije nužno vezana za zakonsko sredstvo plaćanja i nema pravni status novca ili valute, ali je fizička ili pravna lica prihvataju kao sredstvo razmene i može se kupovati, prodavati, razmenjivati, prenositi i čuvati elektronski) i digitalni tokeni (vrsta digitalne imovine i označava bilo koje nematerijalno imovinsko pravo koje u digitalnoj formi predstavlja jedno ili više drugih imovinskih prava, što može uključivati i pravo korisnika digitalnog tokena da mu budu pružene određene usluge).

² Petrović Ž. (2022). Ujedinjeni narodi i NATO u ratnoj i postratnoj Bosni i Hercegovini - stručni rad. U Časopisu: Zaštita i sigurnost za 2022. godinu, Godina 2, br. 2, str. 103. Dostupno na: https://zisjournal.com/wp-content/uploads/2024/06/Godina_2.Broj_1.pdf. Datum pristupa: 01.07.2025. godine.

³ Delić H. (2021). Uloga sistema sigurnosti Bosne i Hercegovine u migrantskoj krizi, u svijetlu kompleksnog uređenja države Bosne i Hercegovine - stručni članak. U Časopisu: Zaštita i sigurnost za 2021. godinu, Godina 1, br. 1, str. 53. Dostupno na: https://zisjournal.com/wp-content/uploads/2024/06/Godina_1.Broj_1.pdf. Datum pristupa: 01.07.2025. godine

Zakon je stupio na snagu 2021. godine i sadrži 146 članova podijeljenih u IX glava. Zakonska definicija digitalne imovine podrazumijeva digitalni zapis vrijednosti koji se može digitalno kupovati, prodavati, razmjenjivati ili prenositi, i koji se može koristiti kao sredstvo razmjene ili u svrhu ulaganja, pri čemu digitalna imovina ne uključuje digitalne zapise valuta koje su zakonsko sredstvo plaćanja i drugu finansijsku imovinu koja je uređena drugim zakonima⁴. U pravnom smislu, digitalna imovina se smatra novim institutom, pa samim tim i posebnom imovinom i jednom od najvećih izazova savremenog imovinskog prava, pa su gotovo neograničeni potencijali primjene digitalnih sredstava u budućnosti, te ekonomičnost i efikasnost glavni su razlozi povećanog interesa zakonodavaca širom svijeta i brojnih međunarodnih finansijskih organizacija za ovu vrstu imovine (Mirković, 2023, 20). Zakon poznaje dvije vrste digitalne imovine i to : virtualne valute i digitalne tokene. Najznačajnija virtualna valuta je bitcoin.

Rad se sastoji od dva dijela. U prvom dijelu rada se obrađuje pojam digitalne imovine kao pravnog instituta, kao i najznačanja EU uredba o tržištima kriptoomovine koja je usvojena 2023. godine. U drugom dijelu rada se obrađuje zakonska regulativa digitalne imovine u Republici Srbiji, kao centralna tema ovog rada, sa osvrtom na status digitalne imovine u Bosni i Hercegovini.

Ključne riječi: zakonska regulativa, digitalna imovina

⁴ Zakon o digitalnoj imovini. "Sl. glasnik RS", broj : 153/2020.

1. POJAM DIGITALNE IMOVINE KAO PRAVNOG INSTITUTA

Digitalna imovina je novi pravni institut, koji je u rječnike prava ušao zahvaljujući razvoju interneta i digitalne komunikacije (Čolaković, 2023, 166). Smatra se posebnom imovinom i jednom od najvećih izazova savremenog imovinskog prava, pa su gotovo neograničeni potencijali primjene digitalnih sredstava u budućnosti, te ekonomičnost i efikasnost glavni su razlozi povećanog interesa zakonodavaca širom svijeta i brojnih međunarodnih finansijskih organizacija za ovu vrstu imovine (Mirković, 2023, 20). Na osnovu toga se stvara novi imovinskopravni institut, digitalna svojina, a pitanje njegove standardizacije postavlja se kao pitanje neophodnosti zakonske regulative, kako na nacionalnom tako i na međunarodnom nivou (Mirković, 2023, 20).

Međutim, u pogledu definiranja digitalnog sadržaja, postoji niz različitih definicija prema legislativi Europske unije, pa tako Direktiva 2019/770 o određenim aspektima ugovora o isporuci digitalnog sadržaja i digitalnih usluga⁵ i Direktiva 2011/83/EU o pravima potrošača⁶ određuju pojam digitalnog sadržaja kao podatke koji su proizvedeni i isporučeni u digitalnom obliku navodeći kao primjere: računalne programe, aplikacije, igre, glazbe, videozapise ili tekstove bez obzira na to pristupa li im se preuzimanjem ili strujanjem, s opipljivog medija ili na bilo koji drugi način⁷. Digitalni sadržaj definiran je i u Direktivi (EU) 2015/2366 o platnim uslugama⁸ kao roba ili usluge koje se proizvode i isporučuju u digitalnom obliku te čija je uporaba ili potrošnja ograničena na tehnički uređaj koji ni na koji način ne uključuje upotrebu ili potrošnju fizičkih dobara ili usluga.

⁵ Direktiva (EU) 2019/770 Europskog parlamenta i Vijeća od 20. maja 2019. godine o određenim aspektima ugovora o isporuci digitalnog sadržaja i digitalnih usluga, SL L 136, pristupljeno 08.01.2025. godine

⁶ Direktiva 2011/83/EU Europskog parlamenta i Vijeća od 25. oktobra 2011. godine o pravima potrošača, izmjeni Direktive Vijeća 93/13/EEZ i Direktive 1999/44/EZ Europskog parlamenta i Vijeća te o stavljanju izvan snage Direktive Vijeća 85/577/EEZ i Direktive 97/7/EZ Europskog parlamenta i Vijeća, Tekst značajan za EGP, Sl. L. 304, 22.11.2011. posebno izdanje za Hrvatsku, Chapter 15 Volume 008 P. 260–284.

⁷ Preambula 19, čl. 2. tačka. 11. Direktive 2011/83 o pravima potrošača.

⁸ Direktiva (EU) 2015/2366 Europskog parlamenta i Vijeća od 25. studenoga 2015. o platnim uslugama na unutarnjem tržištu, o izmjeni direktiva 2002/65/EZ, 2009/110/EZ i 2013/36/EU te Uredbe (EU) br. 1093/2010 i o stavljanju izvan snage Direktive 2007/64/ EZ (Tekst značajan za EGP) SL L 337, 23.12.2015, p. 35–127.

1.1. UREDBA (EU) 2023/1114 EUROPSKOG PARLAMENTA I VIJEĆA OD 31. MAJA 2023. GODINE O TRŽIŠTIMA KRIPTOIMOVINE I IZMJENI UREDABA (EU) BR. 1093/2010 I (EU) BR. 1095/2010 TE DIREKTIVA 2013/36/EU I (EU) 2019/1937

Europsko Vijeće⁹ je Uredbu (EU) 2023/1114 formalno odobrilo 16.05.2023. godine, te se Uredbom o tržištima kryptoimovine (MiCA) prvi put kryptoimovina, izdavatelji kryptoimovine i pružatelji usluga povezanih s kryptoimovinom stavljaju pod jedan usklađeni zakonodavni okvir. Na prvom mjestu se treba definirati kryptoimovina. Kryptoimovina je digitalni prikaz vrijednosti ili prava, a može se prenositi ili pohranjivati elektroničkim putem, s pomoću tehnologije distribuiranog zapisa (DLT)¹⁰ ili slične tehnologije. Kryptoimovina je jedna od glavnih primjena DLT-a u financijama. Uredbom su obuhvaćene tri vrste kryptoimovine : **tokeni vezani uz imovinu** (održavaju stabilnu vrijednost vezivanjem uz nekoliko valuta koje su zakonsko sredstvo plaćanja („fiducijarne valute”), pojedinačnu robu ili više vrsta robe, pojedinačnu kryptoimovinu ili skup kryptoimovine ili košaricu takve imovine, te se koriste se kao sredstvo plaćanja za kupnju robe i usluga te kao sredstvo čuvanja vrijednosti, **tokeni e-novca** (održavaju stabilnu vrijednost vezivanjem uz vrijednosti samo jedne fiducijarne valute i elektronička su zamjena za kovanice i novčanice, te služe prije svega kao sredstvo plaćanja), te **druga kryptoimovina kao što su korisnički tokeni**. Bitno je napomenuti da se kryptoimovina upotrebljava: kao sredstvo plaćanja/razmjene, za potrebe ulaganja, za pristup robi ili uslugama, za kombinaciju naprijed navedenih znački. Novim pravilima uvode se zahtjevi za izdavatelje kryptoimovine i pružatelje usluga povezanih s kryptoimovinom kad je posrijedi : nadzor i odobravanje transakcije, transparentnost i otkrivanje utjecaja kryptoimovine na okoliš.

Nadalje je bitno istaći da je pružateljima usluga povezanih s kryptoimovinom potrebno odobrenje za rad u EU-u, te moraju ispunjavati stroge zahtjeve za zaštitu lisnica potrošača i odgovarat će ako izgube kryptoimovinu ulagatelja, a Europsko nadzorno tijelo za bankarstvo (EBA) vodit će javni registar pružatelja usluga povezanih s kryptoimovinom koji ne ispunjavaju obaveze¹¹. Svakako će kryptoimovina koja je već uređena zakonodavstvom EU-a i dalje će podlijevati postojećim pravilima¹².

⁹ Preuzeto sa : <https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=celex%3A32023R1114> dana 08.01.2025. godine.

¹⁰ Vrsta tehnologije koja omogućava decentralizirano pohranjivanje, ažuriranje i validaciju šifriranih podataka.

¹¹ Preuzeto sa : <https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=celex%3A32023R1114> dana 08.01.2025. godine.

¹² Ibid.

U pogledu koristi pravila EU-a o kriptoomovini¹³, ističu se : pravna sigurnost za kriptoomovinu koja nije obuhvaćena postojećim zakonodavstvom EU-a, bolja zaštita potrošača i ulagača, zaštitne mjere protiv finansijskog kriminala i manipuliranja tržištem, inovacije i pošteno tržišno natjecanje, finansijska stabilnost i smanjenje visokog ugljičnog otiska kriptoomovine.

Na koncu je bitno naglasiti da se pravilima EU-a o tržištima kriptoomovine bolje štite prije svega potrošači i ulagači, te se reguliraju rizici od finansijskog kriminala, a sa druge strane se potiču inovacije.

2. ZAKONSKA REGULATIVA DIGITALNE IMOVINE U REPUBLICI SRBIJI

Zakon o digitalnoj imovini u Republici Srbiji je usvojen od strane Narodne skupštine Republike Srbije, na snagu je stupio dana 21.12.2020. godine, a počeo je da se primjenjuje dana 29.06.2021. godine¹⁴. Početak primjene Zakona o digitalnoj imovini se vezuje za uobičajeni period od 6 mjeseci od usvajanja Zakona (koja odredba je sastavni dio svakog Zakona u prijelaznim i završnim odredbama¹⁵), a koji period ima za cilj da omogući dovoljno vremena za stvaranje uslova za njegovu primjenu (npr. donošenje podzakonskih akata), kao i mogućnost da se svi zainteresovani učesnici na tržištu digitalne imovine upoznaju sa odredbama Zakona (npr. uspostavljanje pravne izvjesnosti, kao i oporezivanje ove vrste imovine). Republika Srbija je jedna od prvih država koja je podržala donošenje naprijed navedenog Zakona, te je samim tim odskočila iz “sive zone” i dokazala da ide u korak sa suvremenim svijetom, za razliku od Bosne i Hercegovine i mnogih drugih država.

Zakon o digitalnoj imovini u Republici Srbiji koji je u konačnici i stupio na snagu sadrži 146 članova koji su inkorporirani u IX glava, dok je nacrt pomenutog Zakona sadržavao samo 70 članova. Nakon usmene rasprave je dodano čak više duplo više članova, međutim naprijed navedeno nije ni iznenađujuće s obzirom da se radi o reguliranju ere digitalizacije koja iz dana u dan napreduje na svjetskom planu.

Donošenje Zakona o digitalnoj imovini u Republici Srbiji je ujedno prouzrokovalo i izmjene i dopune glavnih poreskih zakona u Republici Srbiji, koji

¹³ Ibid.

¹⁴ “Sl. glasnik RS“, broj : 153/2020.

¹⁵ Čl. 146.

uvode kao oporezivu kategoriju digitalnu imovinu¹⁶, što je svakako bio uzročno-posljedični korak.

U ovom radu ćemo se baviti najznačajnijim odredbama pomenutog Zakona i ukratko ih izložiti uz analizu.

U širem smislu zakonodavac je donošenjem naprijed navedenog Zakona dozvolio posjedovanje i trgovanje digitalnom imovinom¹⁷. Zakonska definicija digitalne imovine podrazumijeva digitalni zapis vrijednosti koji se može digitalno kupovati, prodavati, razmjenjivati ili prenositi, i koji se može koristiti kao sredstvo razmjene ili u svrhu ulaganja, pri čemu digitalna imovina ne uključuje digitalne zapise valuta koje su zakonsko sredstvo plaćanja i drugu finansijsku imovinu koja je uređena drugim zakonima¹⁸.

Zakonom¹⁹ su regulirane dvije vrste digitalne imovine i to : virtuelne valute i digitalni tokeni, a podjela je značajna s obzirom na primjenjivanje različitog pravnog režima. *Virtuelna valuta* je vrsta digitalne imovine koju nije izdala i za čiju vrijednost ne garantuje centralna banka, niti drugi organ javne vlasti, koja nije nužno vezana za zakonsko sredstvo plaćanja i nema pravni status novca ili valute, ali je fizička ili pravna lica prihvataju kao sredstvo razmjene i može se kupovati, prodavati, razmjenjivati, prenositi i čuvati elektronski; a *digitalni token* je vrsta digitalne imovine i označava bilo koje nematerijalno imovinsko pravo koje u digitalnoj formi predstavlja jedno ili više drugih imovinskih prava,

¹⁶ Npr. Zakon o porezu na dodatu vrijednost. ("Sl. glasnik RS", br. 84/2004, 86/2004 - ispr., 61/2005, 61/2007, 93/2012, 108/2013, 6/2014 - usklađeni din. izn., 68/2014 - dr. zakon, 142/2014, 5/2015 - usklađeni din. izn., 83/2015, 5/2016 - usklađeni din. izn., 108/2016, 7/2017 - usklađeni din. izn., 113/2017, 13/2018 - usklađeni din. izn., 30/2018, 4/2019 - usklađeni din. izn., 72/2019, 8/2020 - usklađeni din. izn., 153/2020, 138/2022 i 94/2024) i Zakon o porezu na dohodak građana. ("Sl. glasnik RS", br. 24/2001, 80/2002, 80/2002 - dr. zakon, 135/2004, 62/2006, 65/2006 - ispr., 31/2009, 44/2009, 18/2010, 50/2011, 91/2011 - odluka US, 7/2012 - usklađeni din. izn., 93/2012, 114/2012 - odluka US, 8/2013 - usklađeni din. izn., 47/2013, 48/2013 - ispr., 108/2013, 6/2014 - usklađeni din. izn., 57/2014, 68/2014 - dr. zakon, 5/2015 - usklađeni din. izn., 112/2015, 5/2016 - usklađeni din. izn., 7/2017 - usklađeni din. izn., 113/2017, 7/2018 - usklađeni din. izn., 95/2018, 4/2019 - usklađeni din. izn., 86/2019, 5/2020 - usklađeni din. izn., 153/2020, 156/2020 - usklađeni din. izn., 6/2021 - usklađeni din. izn., 44/2021, 118/2021, 132/2021 - usklađeni din. izn., 10/2022 - usklađeni din. izn., 138/2022, 144/2022 - usklađeni din. izn., 6/2023 - usklađeni din. izn., 92/2023, 116/2023 - usklađeni din. izn., 6/2024 - usklađeni din. izn. i 94/2024).

¹⁷ Koju čine virtuelne valute (vrsta digitalne imovine koju nije izdala i za čiju vrednost ne garantuje centralna banka, niti drugi organ javne vlasti, koja nije nužno vezana za zakonsko sredstvo plaćanja i nema pravni status novca ili valute, ali je fizička ili pravna lica prihvataju kao sredstvo razmene i može se kupovati, prodavati, razmjenjivati, prenositi i čuvati elektronski) i digitalni tokeni (vrsta digitalne imovine i označava bilo koje nematerijalno imovinsko pravo koje u digitalnoj formi predstavlja jedno ili više drugih imovinskih prava, što može uključivati i pravo korisnika digitalnog tokena da mu budu pružene određene usluge).

¹⁸ Zakon o digitalnoj imovini. "Sl. glasnik RS", broj : 153/2020.

¹⁹ Ibid.

što može uključivati i pravo korisnika digitalnog tokena da mu budu pružene određene usluge²⁰.

Članom 3. su regulisane usluge koje su povezane sa digitalnom imovinom i obuhvataju :

1. prijem, prenos i izvršenje naloga koji se odnose na kupovinu i prodaju digitalne imovine za račun trećih lica;
2. usluge kupovine i prodaje digitalne imovine za gotov novac i/ili sredstva na računu i/ili elektronski novac;
3. usluge zamjene digitalne imovine za drugu digitalnu imovinu;
4. čuvanje i administriranje digitalne imovine za račun korisnika digitalne imovine i sa tim povezane usluge;
5. usluge u vezi sa izdavanjem, ponudom i prodajom digitalne imovine, sa obavezom njenog otkupa (pokroviteljstvo) ili bez te obaveze (agentura);
6. vođenje registra založnog prava na digitalnoj imovini;
7. usluge prihvatanja/prenosa digitalne imovine;
8. upravljanje portfoliom digitalne imovine;
9. organizovanje platforme za trgovanje digitalnom imovinom.

Nadalje je propisana i djelatnost koja se tiče davanja savjetodavnih usluga²¹ povezanih s digitalnom imovinom (investiciono savjetovanje, davanje investicionih preporuka, savjetovanje u vezi sa strukturom kapitala, poslovnom strategijom, izdavanje digitalne imovine, kao i druge savjetodavne usluge povezane s digitalnom imovinom). Bitno je naglasiti da pružalac savjetodavnih usluga nije dužan da za pružanje tih usluga pribavi dozvolu nadzornog organa, već samo o tome obavijesti korisnika njegove usluge²².

Zakonodavac je nadalje u članu 6. predvidio rudarenje kriptovaluta, a isto se definira kao sticanje digitalne imovine učestvovanjem u pružanju usluge računarskog potvrđivanja transakcija u informacionim sistemima koji se odnose na određenu digitalnu imovinu, te je bitno istaći da se na ove sticaoce digitalne imovine ne primjenjuju zakonske odredbe, ali za slučaj da se isti odluče da sa tako stečenom digitalnom imovinom trguju putem davaoca usluga povezanih sa digitalnom imovinom, onda se i na njih jednako primjenjuju zakonske odredbe,

²⁰ Član 2.

²¹ Član 5.

²² Pa se može pojaviti kao fizičko ili pravno lice.

te je nesporno da mogu trgovati po OTC pravilima²³, kao i sva druga lica (iz čega proizilazi da je OTC trgovanje dozvoljeno Zakonom).

Zakonodavac je predvidio osnovna načela u članu 8. i 9. i to : načelo neutralnosti, efikasnosti, ekonomičnosti i digitalizacije postupka.

Prema načelu neutralnosti, odredbe zakona se ravnopravno odnose na svu digitalnu imovinu bez obzira na tehnologiju na kojoj je ta digitalna imovina zasnovana, uključujući stabilnu digitalnu imovinu. Prema načelima efikasnosti, ekonomičnosti i digitalizacije postupka, svako lice (pravno i fizičko) koje pokreće upravni postupak (zahtjev za odobrenje objavljivanja bijelog papira, zahtjev za izdavanje dozvole za pružanje usluga povezanih s digitalnom imovinom) podnosi odgovarajući zahtjev putem posebnog web portala kojim upravlja služba Vlade Republike Srbije koja je nadležna za projektovanje, usklađivanje, razvoj i funkcionisanje sistema elektronske uprave, i uz taj zahtjev dostavlja cjelokupnu dokumentaciju utvrđenu zakonom i propisima donijetim na osnovu zakona kojom dokazuje ispunjenost uslova za usvajanje tog zahtjeva, čime se gasi birokracija i ulazi se u eru digitalizacije svijeta.

Nadalje je zakonodavac isključivo naglasio da bilo koja vrsta digitalne imovine nije zvanično sredstvo plaćanja²⁴, te da finansijske institucije (banke, osiguravajuće kuće), pod nadzorom Narodne banke, ne mogu posjedovati digitalnu imovinu²⁵. Međutim, kada je riječ o poslovanju pravnih lica i preduzetnika u vezi s digitalnom imovinom, zakonodavac predviđa da nenovčani ulozi u privredno društvo mogu biti u digitalnim tokenima koji se ne odnose na pružanje usluga i rada; prihvatanje digitalne imovine u zamjenu za prodatu robu i/ili pružene usluge u trgovini na malo, preko pružaoca usluga povezanih s digitalnom imovinom – ali on onda mijenja digitalnu imovinu u zvanično sredstvo plaćanja i takvo isplaćuje klijentu; dozvoljena je uspostava založnog prava na digitalnoj imovini, koje se stiče upisom u registar založnog prava koji vodi pružalac usluga²⁶; dozvoljena je i fiducija²⁷

Kada je riječ o prinudnom izvršenju na digitalnoj imovini, zakonodavac je to također predvidio, pa kada izvršenik u sudskom izvršnom postupku posjeduje digitalnu imovinu, povjerilac se može naplatiti iz vrijednosti iste.

²³ “Over the counter” trgovanje (neposredno trgovanje između dva lica).

²⁴ Član 12.

²⁵ Član 13.

²⁶ Dužnik može založiti svoju digitalnu imovinu kao sredstvo obezbjeđenja.

²⁷ Kojom dužnik prenese pravo svojine na digitalnoj imovini na povjerioca kao obezbjeđenje neke obaveze, a ovaj se obavezuje da mu je vrati ako obaveza bude ispunjena.

Međutim, postavlja se pitanje provođenja naprijed navedenog u praksi, a što će svakako vrijeme pokazati.

Budući da je zakonom reguliran postupak kreiranja i izdavanja digitalne imovine u Republici Srbiji, prije svega se sačinjava Bijeli papir (White paper) koji se šalje nadležnom organu na odobrenje²⁸, te se nakon toga pristupa inicijalnim ponudama digitalne imovine²⁹.

Kada je riječ o sekundarnom trgovanju digitalnom imovinom, isto je zakonodavac predvidio, pa čak i onom izdatom izvan Republike, za koju nije izdat bijeli papir u skladu sa Zakonom, ako se radi o digitalnoj imovini kojom se u značajnoj mjeri trguje na globalnom tržištu preko licenciranih, odnosno registrovanih platformi u skladu s propisima Evropske unije³⁰.

Članom 37. je propisano trgovanje i upotreba pametnih ugovora. Szabo (1996, 18) navodi da je pametni ugovor digitalni transakcijski protokol koji izvršava odredbe ugovora, a ciljevi dizajna pametnog ugovora su zadovoljavanje uobičajenih zahtjeva u ugovorima (načine plaćanja, anonimnost) i minimiziranje potrebe za povjerljivom trećom osobom³¹.

Posljednično naprijed navedenom, zakonodavac je radi zaštite obavezao pružaoca usluga da se priklone propisima o sprječavanju pranja novca i finansiranja terorizma, te su izvršene izmjene i dopune naprijed navedenog Zakona u pogledu definiranja i uvrštavanja digitalne imovine u isti³².

2.1. STATUS DIGITALNE IMOVINE U BOSNI I HERCEGOVINI

Kada je riječ o zakonskoj regulativi digitalne imovine u Bosni i Hercegovini, ista još uvijek nije implementirala u bosansko-hercegovačko zakonodavstvo. Međutim, na tragu naprijed navedenog, u Republici Srpskoj su u 2022. godini

²⁸ Član 19.

²⁹ Postupak je kompatibilan američkom sistemu ICO (Initial Coin Offering) u kojem izdavač digitalne imovine nudi istu za tačno utvrđenu cijenu, prije nego što ista bude puštena na javno tržište.

³⁰ Član 31.

³¹ Koristi pametne ugovore za izvršavanje kompleksnih načina plaćanja uz malu naknadu i jednostavnu izvedbu.

³² „Sl. glasnik RS“, broj : 113/17, 91/19, 153/20, 92/23 i 94/24.

usvojene izmjene i dopune Zakona o tržištu hartija od vrijednosti³³ u članu 2. poslije alineje 24. dodaju se nove alineje 25, 26. i 27. koje glase :

- 'Virtuelna valuta' je digitalni zapis vrijednosti koji nije emitovala i za čiju vrijednost ne garantuje centralna banka, niti drugi organ javnog sektora, koja nije nužno vezana za zakonsko sredstvo plaćanja i nema pravni status novca ili valute, ali je fizička i pravna lica prihvataju kao sredstvo razmjene i može se kupovati, prodavati, razmjenjivati, prenositi i čuvati elektronskim putem.
- 'Pružalac usluga povezanih sa virtuelnim valutama' je pravno ili fizičko lice koje pruža jednu ili više slijedećih usluga : čuvanje i upravljanje virtuelnih valuta u ime trećih lica (pružalac depozitarnih usluga novčanika), organizovanje platforme za trgovanje virtuelnim valutama, razmjena virtuelnih valuta za valutu koja je zakonsko sredstvo plaćanja, razmjena virtuelnih valuta za drugu virtuelnu valutu, prenos virtuelne valute, tj. zaprimanje i izvršavanje naloga za virtuelnu valutu u ime trećih strana, sprovođenje ponude, odnosno prodaje virtuelnih valuta.
- 'Pružalac depozitarnih usluga novčanika' je pravno ili fizičko lice koje pruža uslugu čuvanja privatnih kriptografskih ključeva u ime drugog lica radi držanja, čuvanja i prenosa virtuelnih valuta.“

Iz naprijed navedenog proizilazi da iako u našem bosansko-hercegovačkom pravu ne postoji zakonsko uporište za digitalnu imovinu kako je prethodno i navedeno, Republika Srpska je napravila korak naprijed i u pomenuti zakon involvirala odredbe o digitalnoj imovini, iz čega se može zaključiti da će u budućnosti raditi na donošenju pozitivnog propisa u pogledu digitalne imovine, a zakonska rješenja će vjerovatno biti slična, ako ne i ista kao u susjednoj Republici Srbiji.

Što se tiče Federacije Bosne i Hercegovine, u istoj ne postoji još uvijek interes ni za izmjene i dopune Zakona o tržištu hartija od vrijednosti, kao u Republici Srpskoj, iz čega proizilazi da se Federacija Bosne i Hercegovine nalazi u dubokoj „sivoj zoni“, s obzirom da za naprijed navedenim izmjenama i dopunama kasni za Republikom Srpskom duže od dvije godine, pa se postavlja pitanje da li će i kada doći na red razmatranje donošenja Zakona o digitalnoj imovini?

U svemu naprijed izloženom, jedino je pozitivno što je na nivou države Bosne i Hercegovine usvojen Zakon o sprječavanju pranja novca i finansiranja

³³ „Službeni glasnik Republike Srpske“, br. 92/06, 34/09, 30/12, 59/13, 108/13, 4/17, 63/21 i 11/22).

terorističkih aktivnosti 2024. godine³⁴, u kojem je definirana virtuelna valuta³⁵ kao digitalni zapis vrijednosti koji nije emitovala i za čiju vrijednost ne garantuje centralna banka, niti drugi organ javnog sektora, koja nije nužno vezana za zakonsko sredstvo plaćanja i nema pravni status novca ili valute, ali je fizička i pravna lica prihvataju kao sredstvo razmjene i može se prenositi, čuvati, kupovati, prodavati, razmjenjivati elektronskim putem. Naprijed navedeno je svakako preduslov za donošenje Zakona o digitalnoj imovini u nekoj skorijoj ili daljoj budućnosti.

Međutim, ono što je trenutno sporno jeste da je u Bosni i Hercegovini, tačnije entitetu Republike Srpske registrirano nekoliko privrednih društava koje pružaju usluge koje su povezane sa digitalnom imovinom, a nadležna Komisija za hartije od vrijednosti RS izdaje dozvole subjektima koji ispune uvjete za obavljanje poslova u vezi sa virtuelnim valutama. Dakle, na polju digitalne imovine sve su veća interesovanja subjekata, a nadležni organi očito nemaju problema što ne postoji zakonski okvir za uređenje naprijed pomenute materije, što dodatno stvara konfuziju i pravnu nesigurnost, te sve veću mogućnost za malverzacije.

ZAKLJUČAK

Digitalizacija svijeta je u punom jeku, te je pitanje reguliranja digitalne imovine prepoznao znatno mali krug zemalja, među kojima je i Republika Srbija. Republika Srbija još 2021. godine usvaja zakon koji stupa na snagu šest mjeseci poslije i koji se počinje primjenjivati, dok Bosna i Hercegovina na početku 2025. godine još uvijek nema ni naznaku kada bi Zakon o digitalnoj imovini mogao doći na red za predlaganje od strane nadležnih tijela. Upravo iz naprijed navedenog se može zaključiti da je Bosna i Hercegovina i dalje u „sivoj zoni“ za razliku od Republike Srbije. Zakonodavac u Republici Srbiji detaljno regulira područje digitalne imovine, a što se kroz najznačajnije odredbe Zakona i obradilo kroz ovaj rad.

Što se tiče Bosne i Hercegovine, dolazi do neznatnih izmjena i to u jednom entitetu, Republici Srpskoj, u Zakonu o tržištu hartija od vrijednosti, u kojem zakonodavac definira pojam digitalne imovine, što je svakako jedan korak naprijed, dok Federacija Bosne i Hercegovine čak ni to nije učinila. Postavlja se pitanje pravne nesigurnosti neregulisanog područja, budući da u Bosni i Hercegovini postoji nekoliko registriranih pravnih lica koje pružaju usluge koje su povezane sa digitalnom imovinom, a nadležna Komisija za hartije od

³⁴ „Sl. glasnik BiH“, broj : 13/2024.

³⁵ Član 4.

vrijednosti RS izdaje dozvole subjektima koji ispune uvjete za obavljanje poslova u vezi sa virtuelnim valutama.

Zaključak je da Republika Srbija treba da prati Europske standarde i shodno tome, vrši izmjene i dopune, ukoliko bude potrebe za istim, dok Bosna i Hercegovina treba podhitno poduzeti korake koji vode do zakonske regulacije digitalne imovine, što će svakako doprinijeti efikasnosti i ekonomičnosti, kao i pravnoj sigurnosti svih zainteresiranih lica koji žele pružati usluge koje su povezane sa digitalnom imovinom.

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LEGAL REGULATION OF DIGITAL PROPERTY – EXAMPLE OF THE DIGITAL PROPERTY LAW OF THE REPUBLIC OF SERBIA

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Scientific review article

*Čuljević Ilda, MA iur., Municipality Ilidza
Gurda Ena, MA iur., Law office of Amra Gurda*

Abstract:

Subject this one research is legal regulation digital property – example Digital Law property Republics Republic ³⁶of Serbia Serbia is one of the first country which adopted digital law property and by themselves the team got away with it from the "gray zone", unlike many others other country, among which is also Bosnia and Herzegovina. As a modern state, it is committed to integration into contemporary international trends.³⁷ However, the specificity of the organization of the state of Bosnia and Herzegovina directly implied the adoption and enforcement of laws in different legal areas.³⁸

³⁶ Which consists of virtual currency (type digital property which not issued and for whose value does not guarantee central bank, nor another body of public authority, which not necessarily related to law means payments and no legal status of money or currency, but it is physical or legal faces accept as means exchanges and can be bought, sold, exchanged, transferred and to keep electronic) and digital tokens (type digital property and indicates either which intangible property right which in digital form represents one or more other property rights, what can include and right user digital tokens to be his provided certain services).

³⁷ Petrović Ž. (2022). The United Nations and NATO in war and post-war Bosnia and Herzegovina - expert work. In the Journal: Protection and Security for 2022, Year 2, no. 2, p. 103. Available at: https://zisjournal.com/wp-content/uploads/2024/06/Godina_2.Broj_1.pdf. Date of access: 01.07.2025. year.

³⁸ Delić H. (2021). The role of the security system of Bosnia and Herzegovina in the migrant crisis, in the light of the complex organization of the state of Bosnia and Herzegovina - professional article. In the Journal: Protection and Security for 2021, Year 1, no. 1, p. 53.

The law has entered on strength in 2021 and contains 146 members divided into IX chapters. Legal definition digital property implies digital record value that can be digitally buy , sell , exchange or to be transmitted , and which can be use as means exchanges or for the purpose of investments , at why digital property does not include digital currency notes that are legally means payments and another financial property which is arranged other laws ³⁹. In legal sense, digital property is considered new the institute , and then itself team and special property and one of the biggest challenges contemporary property rights , so they are finished unlimited potentials applications digital funds in the future , and economy and efficiency main are reasons increased interest legislators widely world and numerous international financial organization for this type property (Mirković, 2023, 20). He knows the law two types digital property and that: virtual currencies and digital tokens . The most important The virtual currency is bitcoin.

The work consists of two parts. In the first part part of the work is being processed concept digital property as legal institute , as and the most significant EU regulation on markets cryptoassets which was adopted in 2023 . In the second part of the work is being processed legal regulation digital property in the Republic Serbia , as central topic of this work, with in retrospect to digital status property in Bosnia and Herzegovina .

Keywords: *legal regulation, digital property*

1. THE CONCEPT OF DIGITAL PROPERTY AS A LEGAL INSTITUTE

Digital property is a new legal institute, which is in dictionaries rights entered thanks to development internet and digital communication (Čolaković, 2023, 166). It is considered special property and one of the biggest challenges contemporary property rights, so they are finished unlimited potentials applications digital funds in the future, and economy and efficiency main are reasons increased interest legislators widely world and numerous international financial organization for this type property (Mirković, 2023, 20). Based on this, a new property law is created institute, digital property, and the question his/her standardization is set as question necessities legal regulations, how on national so and on international level (Mirković, 2023, 20).

However, in terms of defining digital content, there is series different definition according to legislative European union, and so on Directive 2019/770 on certain aspects delivery contract digital content and digital service⁴⁰ and Directive 2011/83/EU on rights consumer⁴¹ determine concept digital content as data that is produced and delivered in digital in shape stating as examples: computer programs, applications, games, music, videos or texts regardless whether they are accessed by downloading or by flow, from the tangible media or on any other Digital mode⁴² content is also defined in Directive (EU) 2015/2366 on payment instruments services⁴³ as goods or services which are produced and delivered in digital in shape and whose use is or consumption limited on technically device that neither in what way does it not include use or consumption physical goods or service.

⁴⁰ Directive (EU) 2019/770 of the European parliament and of the Council of May 20, 2019 on certain aspects delivery contract digital content and digital service, Official Journal L 136, accessed 08.01.2025. year

⁴¹ Directive 2011/83/EU of the European parliament and Council of October 25, 2011 on rights consumer, change Directives Council Directive 93/13/EEC and European Directive 1999/44/EC parliament and Councils and about putting outside strength Directives Council Directive 85/577/EEC and Directive 97/7/EC of the European parliament and Councils, Text significant for EGP, Sl. L. 304, 22.11.2011. in particular edition for Croatia, Chapter 15 Volume 008 P. 260–284.

⁴² Preamble 19, Article 2, point 11 of Directive 2011/83 on the rights consumer.

⁴³ Directive (EU) 2015/2366 of the European parliament and of the Council of November 25, 2015 on salaries services on internal market, about the change Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No. 1093/2010 and on the placing outside strength Directive 2007/64/EC (Text significant for EEA) OJ L 337, 23.12.2015, p. 35–127.

1.2. REGULATION (EU) 2023/1114 OF THE EUROPEAN PARLIAMENT AND COUNCIL OF MAY 31, 2023 ON CRYPTOASSETS MARKETS AND AMENDING REGULATION (EU) NO. 1093/2010 I (EU) NO. 1095/2010 AND DIRECTIVE 2013/36/EU AND (EU) 2019/1937

European The Council ⁴⁴formalized Regulation (EU) 2023/1114 approved on 16.05.2023. year , and the Regulation on markets cryptoassets (MiCA) for the first time cryptoassets , issuers cryptoassets and providers service crypto -asset related they put under one coordinated legislative frame . On the first the place needs define crypto assets . Crypto assets are digital display values or rights , and can be transferred or to store electronically by means of , with the help of technologies distributed records (DLT)⁴⁵ or similar technologies . Crypto assets are one of the main ones application of DLT in finance . By regulation are three types included cryptoassets : **tokens tied with property** (maintain) stable value by tying with several currencies that are legally means payments (" fiduciary" currency "), individual goods or more type of goods, individual cryptoasset or set cryptoassets or basket such property , and are used as means payments for purchase of goods and service and as means storage values , **e-money tokens** (maintain stable value by tying with values only one fiduciary currencies and electronic are exchange for coins and banknotes , and serve before everything as means payment) , and **other cryptoasset as what are user tokens** . It is important to note that cryptoassets uses : as means payments / exchanges , for needs investments , for access slave or services , for a combination forward the above-mentioned badges . New rules requirements for issuers are introduced cryptoassets and providers service crypto -asset related when it comes to : supervision and approval transactions , transparency and discovery influence cryptoassets on environment .

Furthermore, it is important point out that providers service crypto -asset related necessary work permit in the EU, and must to fulfill strict protection requests wallet consumer and to answer will if lose cryptoasset investors , and the European supervisory banking authority (EBA) lead will public register provider service related to cryptoassets that do not meet obligations ⁴⁶. Certainly will

⁴⁴ Retrieved from: <https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=celex%3A32023R1114> on 08.01.2025. year.

⁴⁵ A type of technology that enables decentralized storage, updating and validation of encrypted data.

⁴⁶ Retrieved from: <https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=celex%3A32023R1114> on 08.01.2025. year.

cryptoasset which is already arranged EU legislation and further will to be subject to existing rules ⁴⁷.

In view of benefits EU rules on cryptoassets ⁴⁸, they point out is : legal crypto asset security which not included existing EU legislation , better protection consumer and investors , protective measures against financial crime and manipulation market , innovation and honestly market competition , financial stability and reduction high carbon footprint cryptoassets .

In the end, it matters. emphasize that EU rules on markets cryptoassets better protect before everything consumers and investors , and are regulated risks from financial crime , and with others the parties are encouraged innovations .

3. LEGAL REGULATION OF DIGITAL PROPERTY IN THE REPUBLIC OF SERBIA

Digital Law they are in the Republic Serbia was adopted by Folk assemblies Republics of Serbia , on entered into force on 21.12.2020. year , and it began to be applied on June 29, 2021. year ⁴⁹. The beginning applications Digital Law property is attached to the usual period of 6 months from adoption Law (which the provision is integral part each Law in Transition and final provisions ⁵⁰) , and which period aims to enable enough time to create conditions for his application (eg , adoption) by-laws acts) , as and the possibility for everyone interested participants on market digital property meet with provisions Law (eg establishment of legal certainty , as and taxation these types property). Republic Serbia is one of the first country which supported adoption forward of the above of the Law , and it is team bounced from the " gray zone" and proved to keep up with contemporary the world , unlike Bosnia and Herzegovina and many other country .

Digital Law property in the Republic Serbia which is ultimately and entered on strength contains 146 members who are incorporated in chapter IX , while the draft the aforementioned Law contained only 70 members . After oral discussions added even more double more members , however forward stated not neither surprising considering that it is about regulating the era of digitization which is progressing day by day on world plan .

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ " Official Gazette of RS" , number: 153/2020.

⁵⁰ Art. 146.

Adoption of the Digital Law property in the Republic Serbia is also caused and changes and additions main tax law in the Republic Serbia , which introduce as taxable category digital property ⁵¹, which was certainly cause -and-effect step .

In this work we will deal with the most important provisions the aforementioned Law and in short them to expose with analysis .

In the wider sense the legislator , by adopting forward of the above Law allowed possession and trading digital property ⁵². Legal definition digital property implies digital record value that can be digitally buy , sell , exchange or to be transmitted , and which can be use as means exchanges or for the purpose of investments , at why digital property does not include digital currency notes that are legally means payments and another financial property which is arranged other laws ⁵³.

By law⁵⁴ are regulated two types digital property and that : virtual currencies and digital tokens , and the division is significant considering on application different legal regime . Virtual *currency* is a species digital property which not issued and for whose value does not guarantee central bank , nor another body of public authority, which not necessarily related to law means payments and no legal status of money or currency , but it is physical or legal faces accept as means exchanges and can be bought , sold , exchanged , transferred and to keep electronic ; and a

⁵¹ For example, the Value Added Tax Act. ("Official Gazette of the RS", no. 84/2004, 86/2004 - corr. , 61/2005, 61/2007, 93/2012, 108/2013, 6/2014 - aligned with internal law , 68/2014 - other laws , 142/2014, 5/2015 - harmonized din. , 5/2016 - harmonized din. , 7/2017 - harmonized din. , 30/2019 - harmonized din. , 72/2019, 8/2020 - harmonized din. ed. , 153/2020, 138/2022 and 94/2024) and the Tax Law on income citizens . ("Official Gazette of RS", no. 24/2001, 80/2002, 80/2002 - other laws , 135/2004, 62/2006, 65/2006 - amended , 31/2009, 44/2009, 18/2010, 50/2011, 91/2011 - harmonized din. , 93/2012 - harmonized din. , 47/2013 , 48/2013 - corrected 57/2014, 68/2014 - Ph.D. law , 5/2015 - harmonized din. izn. , 112/2015, 5/2016 - harmonized din. izn. , 7/2017 - harmonized din. izn. , 113/2017, 7/2018 - harmonized din. izn. , 95/2018, 4/2019 - harmonized din. izn. , 86/2019, 5/2020 - harmonized din. izn. , 153/2020, 156/2020 - harmonized din. izn. , 6/2021 - harmonized din. izn. , 44/2021, 118/2021, 132/2021 - harmonized din. izn. , 10/2022 - harmonized din. exc. , 138/2022, 144/2022 - harmonized Din. izn. , 6/2023 - harmonized din. izn. , 92/2023, 116/2023 - harmonized din. izn. , 6/2024 - harmonized din. izn. and 94/2024).

⁵² Which consists of virtual currency (type digital property which not issued and for whose value does not guarantee central bank , nor another body of public authority, which not necessarily related to law means payments and no legal status of money or currency , but it is physical or legal faces accept as means exchanges and can be bought , sold , exchanged , transferred and to keep electronic) and digital tokens (type digital property and indicates either which intangible property right which in digital form represents one or more other property rights , what can include and right user digital tokens to be his provided certain services) .

⁵³ Digital Property Law. " Official Gazette of RS" , number: 153/2020.

⁵⁴ Ibid.

digital token is a species digital property and indicates either which intangible property right which in digital form represents one or more other property rights, what can include and right user digital tokens to be his provided certain services⁵⁵.

Article 3 states: regulated services which are related with digital property and include :

10. reception , transmission and execution orders related to on shopping and sale digital assets for the account third faces ;
11. services purchases and sales digital assets for cash money and / or funds on account and / or electronically money ;
12. services replacements digital property for another digital property ;
13. keeping and administration digital assets for the account user digital property and with team related services ;
14. related services with by issuing , offering and by sale digital property , with obligation her/his purchase (patronage) or without it obligations (agency);
15. guidance registry pawn shop rights on digital property ;
16. services acceptance / transfer digital property ;
17. management portfolio digital property ;
18. organizing trading platforms digital property .

It is further prescribed and activity concerning benefits advisory service⁵⁶ connected to digital assets (investment) counseling , giving investment recommendation , counseling in connection with structure capital , business strategy , publishing digital property , as and others advisory services connected to digital property). It is important to emphasize that the provider advisory service not obliged to provide quiet service obtain permission supervisory authority, but just let me know user his/her services⁵⁷.

The legislator further provided in Article 6 mining cryptocurrency , and the same is defined as acquisition digital property by participating in providing services computer confirmations transaction in information systems related to on certain digital property , and it is important to point out that on these acquirers digital assets do not apply legal provisions , but just in case the same decide to so

⁵⁵ Article 2.

⁵⁶ Article 5.

⁵⁷ So it can appear as a natural or legal person.

acquired digital property they trade by way of giver service related with digital property, then and on them equally apply legal provisions, and it is indisputable that they can trade according to OTC rules⁵⁸, as and all other faces (from of which it follows that OTC trading allowed Law).

The legislator has foreseen basic the principles in Articles 8 and 9 and that : principle neutrality, efficiency, economy and digitalization procedure.

According to the principle neutrality, provisions the law is equal relationships on all digital property regardless on technology on Whose digital is this? property based, including stable digital property. According to the principles efficiency, economy and digitalization procedure, every person (legal and physical) which starts administrative procedure (application for approval publishing white paper, request for issuance permissions to provide service connected to digital property) submits appropriate request by way of special web portal by which manages service of the Government of the Republic Serbia which is responsible for the design, coordination, development and functioning system electronic administration, and with that request delivers the whole documentation established by law and regulations I bring on basis law with which proves fulfillment conditions for adoption that one request, which turns off bureaucracy and we are entering an era digitalization world.

Furthermore, the legislator exclusively emphasized that either which type digital property not officially means payments⁵⁹, and that financial institutions (banks, insurance companies) houses), under supervision Folk banks, I can't to own digital property⁶⁰. However, when it comes to business legal faces and entrepreneurs related to digital property, legislator provides that non-monetary investment in the economy society I can to be in digital tokens that are not related on providing service and work; acceptance digital property in exchange for the sold goods and / or provided in- store services on a little, over provider service connected to digital property – but then he changes digital property in official means payments and such pays out to the client; establishment is allowed pawn shop rights on digital property, which is acquired by registration pawn shop law that governs provider service⁶¹; it is also allowed fiduciary⁶²

⁵⁸ "Over the counter" trading (immediate trading between two faces).

⁵⁹ Article 12.

⁶⁰ Article 13.

⁶¹ Debtor can to pledge yours digital property as means security.

⁶² Which debtor transfer right properties on digital property on creditor as security some obligations, and the latter undertakes to return it to him if obligation wake up fulfilled.

When it comes to forced execution on digital property, the legislator is also that predicted, so when executor in court executive procedure owns digital property, the creditor may to charge from values the same. However, a question arises implementation forward stated in practice, and what will certainly time show.

Since the law regulated procedure creation and publishing digital property in the Republic Serbia, before everything is made up of White paper (White paper) that is sent competent organ on approval⁶³, and then it is accessed initial offers digital property⁶⁴.

When it comes to secondary trading digital property, the same is the legislator predicted, and even and that one issued outside Republic, for which not issued white paper in accordance with By law, if it is digital property which in a significant way measure trades on global market over licensed, or registered platform in accordance with regulations European Union⁶⁵.

Article 37 stipulates trading and use smart of the contract. Szabo (1996, 18) states that he is smart contract digital transactional protocol that executes provisions contract, and the goals design smart contract are satisfaction usual requirements in contracts (ways payments, anonymity) and minimization need for confidentiality third person⁶⁶.

Consequently forward above, the legislator works protection obliged provider service to bow regulations on prevention washing money and financing terrorism, and are executed changes and additions forward of the above Law regarding defining and inclusions digital property in the same⁶⁷.

⁶³ Article 19.

⁶⁴ The procedure is compatible American to the ICO (Initial Coin Offering) system in which publisher digital property offers the same for exactly established price, before than what the same wake up released on public market.

⁶⁵ Article 31.

⁶⁶ Use smart contracts for execution complex way payments with small compensation and simple performance.

⁶⁷ "Official Gazette of RS", number: 113/17, 91/19, 153/20, 92/23 and 94/24.

3.1. STATUS OF DIGITAL ASSETS IN BOSNIA AND HERZEGOVINA

When it comes to the legal regulation of digital assets in Bosnia and Herzegovina, it has not yet been implemented in Bosnia and Herzegovina's legislation. However, following the above, amendments to the Law on the Securities Market were adopted in the Republika Srpska in 2022.⁶⁸ in Article 2, after paragraph 24, new paragraphs 25, 26 and 27 are added, which read:

- 'Virtual currency' is a digital record of value that has not been issued and whose value is not guaranteed by a central bank or other public sector body, which is not necessarily tied to a legal tender and does not have the legal status of money or currency, but is accepted by natural and legal persons as a means of exchange and can be bought, sold, exchanged, transferred and stored electronically.
- 'Virtual currency service provider' is a legal or natural person that provides one or more of the following services: safekeeping and management of virtual currencies on behalf of third parties (wallet depository service provider), organization of a platform for trading virtual currencies, exchange of virtual currencies for legal tender, exchange of virtual currencies for another virtual currency, transfer of virtual currency, i.e. reception and execution of orders for virtual currency on behalf of third parties, implementation of the offer, i.e. sale of virtual currencies.
- "A 'wallet custodian service provider' is a legal or natural person that provides the service of storing private cryptographic keys on behalf of another person for the purpose of holding, storing and transferring virtual currencies."

From the above, it follows that although there is no legal basis for digital property in our Bosnian and Herzegovina law, as previously stated, the Republika Srpska has taken a step forward and included provisions on digital property in the aforementioned law, from which it can be concluded that in the future it will work on adopting positive legislation regarding digital property, and the legal solutions will likely be similar, if not the same, as in the neighboring Republic of Serbia.

As for the Federation of Bosnia and Herzegovina, there is still no interest in amendments to the Law on the Securities Market, as in the Republic of Srpska, from which it follows that the Federation of Bosnia and Herzegovina is in a deep "gray zone", given that the aforementioned amendments are more than two years

⁶⁸ " Official Gazette of the Republic of Srpska", no. 92/06, 34/09, 30/12, 59/13, 108/13, 4/17, 63/21 and 11/22).

behind the Republika Srpska, so the question arises whether and when it will be time to consider the adoption of the Law on Digital Assets?

In all of the above, the only positive thing is that the Law on the Prevention of Money Laundering and Financing of Terrorist Activities of 2024 was adopted at the state level of Bosnia and Herzegovina ⁶⁹, which defines virtual currency ⁷⁰as a digital record value that is not broadcast and for whose value does not guarantee central bank, nor other public authority sector, which not necessarily related to law means payments and no legal status of money or currency, but it is physical and legal faces accept as means exchanges and it can be transferred, stored, bought, sold, exchanged electronically via. Forward it is certainly stated prerequisite for adoption Digital Law property in some more recent or further future.

However, what is currently controversial is that in Bosnia and Herzegovina, more precisely entity Republika Srpska registered a few economic societies which provide services which are related with digital property, and the competent The RS Securities Commission issues permits to entities that fulfill conditions for performing related jobs with virtual currencies. So, on field digital property all are larger interests subjects, and the competent organs obviously they don't have problems which does not exist legally decoration frame forward mentioned matter, which additionally creates confusion and legal uncertainty, and all larger possibility of fraud.

CONCLUSION

The digitization of the world is in full swing, and the issue of regulating digital assets has been recognized by a considerably small circle of countries, among which is the Republic of Serbia. As early as 2021, the Republic of Serbia will adopt a law that will enter into force six months later and will begin to be implemented, while Bosnia and Herzegovina at the beginning of 2025 still has no indication when the Law on Digital Property could be proposed by the competent authorities. Precisely from the above, it can be concluded that Bosnia and Herzegovina is still in the "grey zone", unlike the Republic of Serbia. The legislator in the Republic of Serbia regulates the area of digital property in detail, and this work has dealt with the most important provisions of the Law.

As for Bosnia and Herzegovina, there are minor changes in one entity, the Republika Srpska, in the Law on the Securities Market, in which the legislator

⁶⁹ "Official Gazette of BiH", number: 13/2024.

⁷⁰ Article 4.

defines the concept of digital assets, which is certainly a step forward, while the Federation of Bosnia and Herzegovina has not even done so. The question of legal uncertainty in an unregulated area arises, since there are several registered legal entities in Bosnia and Herzegovina that provide services which are related with digital property, and the competent The RS Securities Commission issues permits to entities that fulfill conditions for performing related jobs with virtual currencies

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The conclusion is that the Republic Serbia should follow European standards and accordingly, performs changes and additions, if wake up needs for the same, while Bosnia and Herzegovina needs urgently undertake steps leading to legal regulations digital property, which will certainly contribute efficiency and economy, as and legal security all interested persons who want to provide services which are related with digital property.

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