VIRTUAL CURRENCIES
CORRUPTION AND ECONOMIC CRIME

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OVERVIEW

– Outline of the problems
– What are Virtual Currencies (VCs)?
– Legal consequences (constitutional barriers)
– Actors involved
– Update of the 4th AML-Directive
– AML and Virtual Currencies in Austria today
OUTLINE OF THE PROBLEMS

- "The next big thing“ – here to stay
- Name covers a plethora of phenomena
- Risk for money laundering comparable to cash – but faster
- Legal uncertainty (still)
  - Differing legal views of various institutions (e.g., FMA, Ministry)
  - Increasingly more literature on individual legal aspects
  - Consideration of constitutional aspects
- Austria: no legislation, no judicial or administrative decisions
- European Union: Update of the 4th AML-Directive on track
WHAT ARE VIRTUAL CURRENCIES? (I)

- **Function-related** approach
  - Data points in a **distributed ledger**
  - Means of **digitally transferring value**
  - Transactions are
    - **recorded permanently**
    - **unchangeable**
  - Disposal requires **knowledge of private key**

- **Origin-related** approach:
  - Invention of the **private sector**
  - **Digital commodity**
WHAT ARE VIRTUAL CURRENCIES? (II)

– Right to **dispose of the value** embodied in the record and to **exclude others** from it

– “Things” in the sense of § 285 General Civil Code (ABGB)
  – Necessary: controllability
  – Particularly pronounced: Private key!

– More **precise classification**
  – Immaterial, movable, consumable, estimable, fungible things
LEGAL CONSEQUENCES

– **Property law** applies
  – Ownership

– **VCs may be subject of contracts**
  – purchase, barter, donation, loan, pledge, etc.

– Any regulation is necessarily **subject to fundamental rights** barriers
  – freedom of ownership
  – freedom of occupation
  – principle of equality
**ACTORS INVOLVED**

Network of miners who are constantly confirming transaction requests

- Regular user placing transaction requests to the network ("A -> B: 5")
- Interface providers that allow easy access (e.g., wallet providers)
- Exchanges/traders exchanging virtual for real currency.
UPDATE OF THE 4\textsuperscript{TH} AML-DIRECTIVE (II)

- 07/2016 \textbf{Legislative proposal} (COM(2016)0450)
- 12/2016 \textbf{Committee} on Legal Affairs \textbf{opinion} (PE594.003)
- VC ‘\textit{gate keepers}’ to be covered
  
  - "(g) \textbf{providers} engaged \textit{primarily and professionally} in \textbf{exchange services} between virtual currencies and fiat currencies;
  
  - (h) \textbf{wallet providers} offering \textbf{custodial services} of credentials necessary to access virtual currencies.";

- Gate keepers to be \textbf{licensed or registered}

- \textbf{Same scrutiny} as other covered entities
UPDATE OF THE AML-DIRECTIVE (I)

− Definition proposal

− “'virtual currencies' means a digital representation of value that is neither issued by a central bank or a public authority, nor necessarily attached to a fiat currency, but is accepted by natural or legal persons as a means of payment and can be transferred, stored or traded electronically.”

− Committee opinion

− “'virtual currencies' means a digital representation of value that is neither issued by a central bank or a public authority, nor attached to a legally established currency, which does not possess the legal status of currency or money, but is accepted by natural or legal persons as a means of exchange or for other purposes, and can be transferred, stored or traded electronically. Virtual currencies cannot be anonymous.”
AML AND VIRTUAL CURRENCIES TODAY

– Austrian Trade Regulation (Gewerbeordnung; GewO)
  – §§ 365m1 to 365z GewO
  – KYC obligations generally for all ‘trades’
– Federal Ministry of Economic Affairs
  – Trading with virtual currencies does not constitute a ‘trade’
– Erroneous legal qualification
– Correct
  – VCs are private economic goods
  – Trading of VCs constitutes a trade
  – Traders are covered by AML provisions
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