

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)

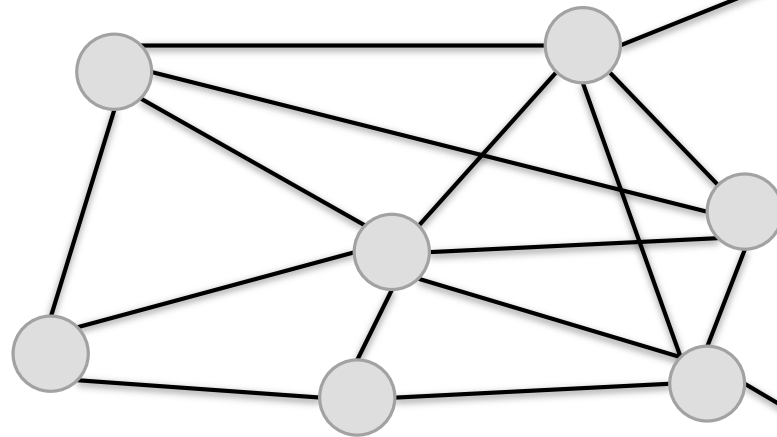
- Right to dispose of the value embodied in the record and to exclude others from it
- “Things” in the sense of § 285 General Civil Code (ABGB)
 - Necessary: controllability
 - Particularly pronounced: Private key!
- More precise classification
 - Immaterial, movable, consumable, estimable, fungible 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 4TH AML-DIRECTIVE (II)

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