



# MONEY LAUNDERING THROUGH CRYPTOCURRENCIES: INTERNATIONAL AND NATIONAL LEGAL FRAMEWORK

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**Abstract:** *The digital world has undergone an unprecedented revolution in recent years with the emergence of cryptocurrencies. These decentralized digital currencies offer many advantages in terms of speed, reduced transaction costs and relative anonymity. However, the same anonymity has also raised concerns about their potential use in illicit activities such as money-laundering. Money laundering through cryptocurrencies poses complex challenges for public international law, and national law, because it transcends state boundaries and can involve multiple actors hidden behind encrypted identities.*

**Keywords:** *Cryptocurrencies, money laundering, public international law, domestic laws.*

## INTRODUCTION

In recent years, the rise of cryptocurrencies has revolutionized the global financial landscape, posing unique challenges to governments and regulators worldwide. While these digital assets promise decentralization, anonymity and efficient financial transactions, they have also become an attractive tool for illicit activities, with money-laundering at the forefront. Money-laundering in cryptocurrencies has become an urgent concern that requires immediate attention by the international community.

The first cryptocurrencies date back to 2009 with the creation of Bitcoin, the most famous of digital currencies. Its creator, known as Satoshi Nakamoto, introduced blockchain<sup>1</sup> technology, which allows secure and decentralized transactions. Since then, many other cryptocurrencies have emerged, each with its own characteristics and objectives. These digital currencies have attracted increasing interest from the financial sector and regulators, as well as from criminal elements that increasingly exploit the anonymity offered by cryptocurrencies.

Accordingly, cryptocurrencies transcend national boundaries and operate in a decentralized manner; it becomes difficult for governments to assert authority over digital assets despite attempts at national regulation. The lack of international coordination undermines the fight against the use of cryptocurrencies for money laundering. Therefore, the development of a coherent legal framework to combat cross-border money laundering in cryptocurrencies is becoming a major concern for the international community.

This raises the question of whether traditional anti-money laundering measures have proved inadequate. To what extent does the current legal framework at national and international level address the challenges posed by money laundering through cryptocurrencies?

We propose to address this issue through a comprehensive presentation of the issue from a legal perspective of money laundering in cryptocurrencies. By underlining attempts to control cryptocurrency laundering at the national level in the face of an international impasse, we are thus seeking to pave the way for the development

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<sup>1</sup>- Blockchain is a decentralised database (distributed ledger) that compiles all transactions already carried out within a "blockchain". Blockchain is used to store data that is no longer editable. It is then possible to transfer, record and prove ownership of digital values without having to rely on a third party.



of robust international mechanisms to combat this growing threat and safeguard the integrity of the global financial system.

## I- MONEY LAUNDERING THROUGH CRYPTOCURRENCIES: AN INTERNATIONAL THREAT

Money laundering through cryptocurrencies has become a major concern at the international level. The decentralized and anonymous nature of these digital currencies provides criminals with a sophisticated way of concealing the origin of their illicit funds. This threat transcends national borders, making it difficult for states to regulate and repress. It is unnecessary to regulate it without the determination and precision of what a cryptocurrency is (1) and the techniques of money laundering through it (2).

### 1- Definition of cryptocurrency

Called crypto assets, or cyber money, payment tokens, crypto currencies, or simply digital currencies are all abundant qualifiers and testify to the complexity that the world of law is faced with when it comes to qualifying cryptocurrencies. Although the latter term is the most widely used.

Several legal definitions have been given to these digital currencies at European level, including that of the European Central Bank (ECB), which defines them as

“A digital representation of a value that is not issued by a central bank, credit institution or electronic money institution and that, in some cases, can be used as an alternative to money”<sup>2</sup>.

The European Union defines them as follows in the fifth AML/CFT Directive of May 30<sup>th</sup> 2018:

“A digital representation of a value which is not issued or guaranteed by a central bank or public authority, that is not necessarily linked to a legally established currency and that has no legal status as a currency or currency, but is accepted as a means of exchange by natural or legal persons and that can be transferred, stored and exchanged electronically”<sup>3</sup>.

This definition of digital currency excludes from the latter those that are not issued by centralized institutions or institutions. Conversely, the Canadian bank includes them in its definition of digital currencies, i.e. as a “monetary value stored electronically by various means, such as a mobile phone, a touch pad, a contactless card (or smart card), a hard disk or a server, and transferrable digitally. Most of the time, e - money is issued by an institution after a receipt of funds and its value is expressed in national currency”.<sup>4</sup>

In Belgian law, the Belgian Royal Decree of February 8<sup>th</sup> 2022 reproduces a definition that is almost identical to that cited above by the European Union. It defines them as “digital representations of value which are not issued or guaranteed by a central bank or a public authority, which are also not necessarily linked to a legally established currency and which do not have the legal status of money or money, but which are accepted as a means of exchange by natural or legal persons and which can be transferred, stored and exchanged electronically”<sup>5</sup>. This definition is also adopted by the Financial Services and Markets Authority (FSMA)<sup>6</sup>.

In Algerian law, the legislature uses the term ‘virtual currency’ in Article 117, which states that “...The virtual currency is the one used by internet users through the web. It is characterized by the absence of physical

<sup>2</sup> - Commission de Surveillance du Sector Financier (CSSF), “Warning on virtual currencies”, 14 March 2018, available at: <https://www.cssf.lu/fr/2018/03/avertissement-sur-les-monnaies-virtuelles> (01/08/2023).

<sup>3</sup> - Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing and Directives 2009/138/EC and 2013/36/EU. available at: <https://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:32018L0843&from=FR> (01/08/2023).

<sup>4</sup> Bank of Canada, Electronic Money, Backgrounders, 2014, available at: [https://www.banqueducanada.ca/wp-content/uploads/2014/04/monnaie\\_electronique\\_document\\_informatique.pdf](https://www.banqueducanada.ca/wp-content/uploads/2014/04/monnaie_electronique_document_informatique.pdf) (02/08/2023).

<sup>5</sup> - Royal Decree of 8 February 2022 on the status and supervision of providers of exchange services between virtual currencies and legal currencies and providers of custody portfolio services (Moniteur belge of 23 February 2022) - Article 3(5).

<sup>6</sup> - Financial Services and Markets Authority (FSMA), What is meant by “virtual currencies?”, available at: [www.fsma.be/fr/faq/7-quentend-par-monnaies-virtuelles](http://www.fsma.be/fr/faq/7-quentend-par-monnaies-virtuelles) (5 August 2023).



support such as coins, banknotes, payments by check or credit card. ...”<sup>7</sup> From this restrictive definition, it is clear that virtual currency is defined as unregulated digital currency, and is therefore prohibited from being bought and sold under Algerian law.

In the United States Despite the infatuation for cryptocurrencies, the U.S. legislator has not yet adopted a single and harmonized legal definition of cryptocurrency, although discussions are ongoing within the government and regulatory bodies<sup>8</sup>.

Many legal scholars seek to define cryptocurrencies, the one that defines them as “virtual digital assets that rely on the blockchain technology through a decentralized registry and an encrypted computer protocol. As a cryptographic currency, it is a digital currency issued on a peer-to-peer basis, without the need for a central bank.”<sup>9</sup>

From these definitions, it is possible to identify Three characteristics that define cryptocurrencies together:

- They are virtual currencies, i.e. digital representations of purely fiduciary value: they are not issued or guaranteed by a central bank or by a credit or monetary institution;
- They use cryptography: they are designed and adapted to deliver value over the Internet in a fully open, public, and secure environment.
- Most, but not all, operate in a decentralized system, where information is fully, simultaneously and equally distributed among all participants. Transactions are decided and validated by “consensus”. Many, but not all, are backed by the blockchain technology.

Given the relatively recent development of these digital currencies, there is no consensus on their definition, and their status is unclear, adding to this the lack of terminology and common interpretation and vocabulary, which leads to confusion in the understanding of its functioning and calls into question the verification thereof by the states.

## 2- Techniques Of Money Laundering by Means of Cryptocurrencies

The emergence of cryptocurrencies has brought with it new opportunities and challenges in the global financial landscape. While these digital currencies offer considerable advantages in terms of speed, ease and anonymity in transactions, they have also opened the door to new money laundering and terrorist financing techniques, including:

### a- The Mixing Service (MSC)<sup>10</sup>:

One of the main methods used by money launderers is the use of the mixing service, which is a fee-based service that allows illegal actors to launder their corrupt cryptocurrencies derived from their criminal activities, mixing them with the legitimate cryptocurrencies of other users. It should be noted that a cryptocurrency user can create an unlimited number of portfolios. Illegal actors can therefore create and use thousands of portfolios<sup>11</sup>.

<sup>7</sup> - Law No 17-11 of 27 December 2017, on the Finance Law for 2018, Official Gazette of the Algerian Republic, No 76, of 28 December 2017.

<sup>8</sup> -Turner Wright, Coinbase CEO to meet with US legislators to discuss legislation on crypto-currencies, available at: <http://fr.cointelegraph.com/news/coinbase-ceo-meet-lawmakers-discuss-crypto-legislation> (31-12-2023).

<sup>9</sup> - Larabi Ferhat, L'évolution des cours des crypto monnaies sur les marchés financiers, master en science économique, master's degree in economic science, Mouloud Mammeri University of Tizi-Ouzou, the year is not indicated, p34.

<sup>10</sup> - These services are also known as tumblers, blenders or Bitcoin mixers.

<sup>11</sup> - OECD, Ending abusive financial arrangements: Curbing intermediaries who promote tax crimes and white-collar crime, OECD, 2021, Paris, p21.



As a result, malicious actors use the mixing service to mask the connection between cryptocurrency portfolios to collect their illegally obtained gains and the portfolios from which they transfer their funds to trading platforms. In this way, they can bypass anti-money laundering alerts.

Thus, this service contributes to the anonymity of transactions to malicious actors, just by adding intermediate transit information allowing hiding the link between the entry address and the exit address of a transaction, in this way the confidentiality of the transaction is ensured and the identification of the origin of the funds becomes very difficult<sup>12</sup>

## **b- The darknet markets**

The Internet offers new opportunities for money laundering through cryptocurrencies, both through the classic Internet and the dark Internet. Unlike the classic Internet (also known as the 'surface Internet'), which contains publicly accessible information indexed by common search engines such as Google or Yahoo, the dark Internet is a set of networks designed to ensure anonymity of users through the implementation of a decentralized architecture as well as specific software and access permissions; by extension, all the activities, often illegal, that are carried out there<sup>13</sup>.

Darknets are superimposed networks that are intentionally anonymised and kept out of sight of search engines and referencing software. They were originally created for military purposes, to protect US agents abroad by ensuring the anonymity of their communications. They called it 'Tor', which means 'The Onion Router'<sup>14</sup>.

The Darknets were later taken over and developed by anarchist and libertarian groups that wanted to circumvent the oppressive and capitalist laws of intellectual property.

This anonymity of the Darknets has fostered the development of the markets of the Darknet -also called "crypto markets"-<sup>15</sup> - between buyers and sellers, and it is mainly cryptocurrencies that are used for payment in these markets to facilitate the trade of goods such as weapons and illicit drugs.

Darknet markets are considered the hotspots of cybercrime. Among the best known are Silk Road, French Deep Web, Trollodrome, Dream Market, Hydra, Televend...

Crypto-currencies provide users with the anonymity they need to conduct such transactions, further complicating efforts to track down and combat money laundering.

## **II- THE LAUNDERING OF CRYPTOCURRENCIES: NATIONAL LEADERSHIP AND INTERNATIONAL DEADLOCK**

Money laundering via cryptocurrencies has become a serious issue for the international community in recent years. The relative anonymity of transactions in cryptocurrencies like Bitcoin makes it difficult to trace illicit funds. Although the international legal framework already provides tools to combat money laundering in general, there is no specific international regulation on cryptocurrencies (1), in light of this global legal vacuum; several states have undertaken initiatives to fill the gaps (2).

**1- The absence of a comprehensive and specific international legal framework:** Although cryptocurrencies are a recent phenomenon, it is clear that there is still no comprehensive international legal framework for regulating cryptocurrencies. Several long-standing international conventions are potentially applicable to combat their use for money-laundering purposes.

<sup>12</sup> -Belhoul Lydia & Lalaoui Ferial, *Anonymat et vie privée dans la blockchain*, Master's degree in computer science, Abderrahmane Mira University of Bejaia, 2020-2021, p38.

<sup>13</sup> - The French legislature is one of the few to have defined the clandestine internet in the vocabulary of information technology and the internet (list of terms, expressions and definitions adopted), text No 110, Journal officiel de la République française (JORF), No 0225, 26 September 2017, available at the following address: <https://www.legifrance.gouv.fr/jorf/jo/2017/09/26/0225> (19.08.2023).

<sup>14</sup> - The anonymous Tor network is now an essential element of the so-called "dark web", see Arnaud Stephan, *Identités en confrontation; Confidence and Anonymity in Darknet Markets*, Master's thesis in Digital Humanities, Lausanne Universities, 2018, p38.

<sup>15</sup> - Julian Broseus et al., 'Studying illicit drug trafficking on Darknet markets: structure and organisation from a Canadian perspective', *Forensic Science International*, vol. 264, 5 March 2016, p. 7



The first one is the Vienna International Convention for the Prevention of the Laundering of Money Derived, Inter alia, from Illicit Traffic in Narcotic Drugs and Psychotropic Substances<sup>16</sup>, which was ratified in Vienna on December 20<sup>th</sup> 1988 and entered into force on November 11<sup>th</sup> 1990. This Convention was the first international instrument to criminalize the phenomenon of money laundering linked to drug trafficking. Although not explicitly mentioned, these provisions could make it possible to suppress money laundering via cryptocurrencies in illicit markets.

Similarly, the Council of Europe Convention on Money Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, known as the Strasbourg Convention, which was signed by the States of the European Community in Strasbourg on November 8<sup>th</sup> 1990, also contains a series of legislative measures and procedures relating to the fight against money laundering. Its scope is broad and potentially encompasses cryptocurrency laundering.

In addition, some international legal instruments, such as the United Nations Convention against Transnational Organized Crime and the Palermo Convention, were signed in Palermo in December 2000. Can be applied to cryptocurrency laundering. The Convention provides for judicial and police cooperation mechanisms to combat money laundering, irrespective of the technical means used.

Certainly, international regulators are also taking the issue more seriously. For example, the Financial Action Task Force (FATF), an intergovernmental body created in 1989 at the Arche Summit in Paris by the seven major industrialized countries, the G7<sup>17</sup>. This intergovernmental body has the essential task of combating the crime of money laundering by developing and promoting standards and policies to that end. In 2019<sup>18</sup>, it adopted new recommendations to frame virtual assets in order to combat money laundering and terrorist financing. These recommendations aim to subject cryptocurrency exchange platforms to the same due diligence requirements as traditional financial institutions.

Although these recommendations are the beginning of an international legal framework on cryptocurrencies, they have only an incentive effect and focus solely on the angle of financial crime, without addressing the entire issues specific to cryptocurrencies, and they remain non-binding.

Of the same kind, the European Commission adopted on April 20<sup>th</sup> 2023 the regulation of the markets for crypto-assets, MiCA or (*Markets in Crypto-Assets*) in the framework of the *Digital Finance Package* initiative, aimed at regulating crypto-assets which are not covered by existing European regulations on financial instruments and products, by creating a balanced European regulatory framework aimed at protecting European investors<sup>19</sup>.

This lack of an international regime may be explained by the recent and complex nature of this legal object, which is still poorly understood. Adding to this the speed with which cryptocurrencies evolve, as well as the diversity of their uses, makes it difficult to develop harmonized international standards. On the other hand, the willingness of some states to take advantage of this elusive technology hinders the adoption of restrictive common standards.

However, the emergence of cryptocurrencies raises increasing cross-border challenges, the international legal vacuum of which leaves states without financial means facing the opportunities and risks posed by these currencies.

<sup>16</sup> - In Algeria, the fight against this traffic is regulated by Law No 23-05 of 7 May 2023, amending and supplementing Law No 04-18 of 25 December 2004 on the prevention and suppression of the illicit use and trafficking of narcotic drugs and psychotropic substances, OJ No 32, 09/05/2023.

<sup>17</sup> - The United States, Canada, Japan, France, Great Britain, Germany and Italy.

<sup>18</sup> - FATF (2019), Guidelines for the risk-based approach to virtual assets and service providers related to virtual assets, FATF, Paris, France, <http://www.fatf-gafi.org/fr/publications/recommandationsgafi/documents/Lignes-directrices-PSAV.html> (19/09/2023).

<sup>19</sup> - see Crypto-asset markets: MiCA adopted by the European Parliament | MFA (amf-france.org) (22/10/2023)



## 2-National attempts at sectoral regulation

In view of the seriousness and scale of the devastating effects of the crime of money-laundering by cryptocurrencies, and in view of the shortcomings of the international legal framework, several States have decided to legislate to combat that crime. However, these attempts remain fragmented and compartmentalized at this stage.

For example, on December 9<sup>th</sup> 2020, the French Government adopted Order No 2020-1544 to strengthen the fight against money laundering and terrorist financing applicable to digital assets<sup>20</sup>, i.e. cryptocurrencies. That order thus precludes the anonymity of transactions in cryptocurrencies by including digital asset service providers (DASPs) established by the PACTE Law. It makes DASPs providing the services of exchanging cryptocurrencies for other cryptocurrencies and operating a cryptocurrency trading platform subject to mandatory registration with the Financial Markets Authority (FMA). It also focuses on the key AML/CFT obligations the due diligence carried out by the authorities when registering the PSANs providing the services of custody and the purchase or sale of crypto-currencies in legal tender<sup>21</sup>.

Germany, for its part, has approved specific measures to regulate crypto-assets. As a result, the Bundestag adopted a law on May 20<sup>th</sup> 2012 that extended anti-money laundering obligations to cryptocurrency portfolio providers.<sup>22</sup>

On the other hand, other states such as the Netherlands have recently introduced a new law that regulates all cryptographic exchanges and regulates companies operating in the cryptocurrency market. This recent law imposes a registration requirement on existing and new enterprises, which obliges them to complete a notice and file it with the central bank. This law is in line with the 5<sup>th</sup> EU Anti-Money Laundering Directive (5AMLD), which entered into force on January 10<sup>th</sup> 2020. The aim of this directive is to improve the transparency of financial transactions in the context of the fight against money laundering and terrorist financing.

Unlike the European states, the United States has not adopted comprehensive legislation to regulate crypto-assets. To date, all efforts in this direction have failed. Only a few States have adopted such rules, such as New York or Wyoming. Crypto-assets in the United States are thus, in practice, regulated by a *patchwork* of rules designed for other types of assets.

In Japan, the parliament recently decided to implement stricter anti-money laundering (AML) measures as of June 1<sup>st</sup> 2023. One of the main features of the new measures is the implementation of the "Travel Rule" to improve the traceability of the proceeds of crime. The travel rule obliges financial institutions handling cryptocurrency transfers exceeding \$3,000 to provide information on customers to the exchange or recipient institution. This information includes the name, address and account details of the sender and receiver<sup>23</sup>.

Conversely, other states prohibit all transactions using cryptocurrencies such as Algeria<sup>24</sup>, Morocco<sup>25</sup>, Qatar and Bahrain, while others, without prohibiting their uses, impose indirect restrictions such as China<sup>26</sup>, Thailand, Colombia, Iran.

<sup>20</sup>- Légifrance - Official publications - Official Journal - JORF n° 0298 of 10/12/2020 (legifrance.gouv.fr) (22/10/2023).

<sup>21</sup> - Digital assets: Strengthening by Ordinance the AML/CFT framework applied to the FNIPs | MFA (amf-france.org) (21/10/2023)

<sup>22</sup>- See Global Financial Regulation 2022, Financial Regulation in Germany, available at: (onespan.com) (23/10/2023).

<sup>23</sup> - Damien Bancaï, The Japanese authorities strengthen the control of money laundering via cryptocurrencies, 31 May 2023, available at: <https://www.datasecuritybreach.fr/anti-money-laundering-japan-japon> (23/10/2023).

<sup>24</sup> - law no. 17-11 of 27 december 2017, on the finance law for 2018, op.cit.

<sup>25</sup> - Morocco's Crypto-currency could be authorised and formalised through a bill that is waiting to be passed.

<sup>26</sup> - Thomas Renault, China's impact on the cryptocurrency market, 4 September 2023, available at: <https://fr.cryptonews.com/news/impact-chine-marche-cryptomonnaies.htm> (23/10/2023).





There is therefore a proliferation of national regimes seeking to provide responses to the risks posed by cryptocurrencies. However, these compartmentalized regulations suffer from a lack of harmonization. They are focused on specific aspects (trade, portfolios, etc.) and have difficulty in drawing the outlines of a global and coherent framework. This regulatory fragmentation thus underlines the need to strengthen international coordination in this area.

#### CONCLUSION:

While some States have adopted national regulations in an attempt to deal with cryptocurrencies, the current legal framework remains deficient in the face of the magnitude of the challenges posed by these decentralized assets. At the international level, there is no comprehensive binding convention for effective cooperation against the criminal use of cryptocurrencies. This lack of international coordination undermines fragmented and unilateral national responses. It leaves the door open for cross-border money laundering opportunities offered by cryptocurrencies. It is therefore essential to move towards the establishment of harmonized international standards, which would fill the legal gaps and strengthen the fight against the diversion of cryptocurrencies, at the risk of seeing this phenomenon grow unchecked.

To this end, we suggest:

- The need for an international treaty specific to cryptocurrencies, along the lines of the conventions against money laundering.
- Strengthening the role of coordinating bodies such as the Financial Action Task Force (FATF).
- Promote the exchange of best practices between national authorities.
- Promoting self-regulation of the cryptocurrency industry.