International Comparative Jurisprudence 2022 Volume 8 Issue 1
ISSN 2351-6674 (online) DOI: http://dx.doi.org/10.13165/j.icj.2022.06.003

TOWARDS THE HARMONISATION OF THE INITIAL COIN OFFERING RULES: COMPARATIVE ANALYSES OF THE INITIAL COIN OFFERING LEGAL REGULATION IN THE USA AND THE EU

Marina Kasatkina[1]
Maastricht University, Netherlands,
E-mail: *m.kasatkina@maastrichtuniversity.nl*

Received: 9 March 2022; accepted: 20 May 2022
DOI: http://dx.doi.org/10.13165/j.icj.2022.06.003

Abstract. This article consists of a comparative study of approaches to crypto-assets in the USA and EU, as well as an exploration of the reasons behind such differences. These two jurisdictions vary dramatically in their history, economy and legal systems. Therefore, differences in legal regulation regarding the Initial Coin Offering are to be expected. Doctrinal comparisons of legal regulation rarely shed light on the way that law actually operates, but are necessary to answer the question of why countries do not enact similar approaches to the regulation of the Initial Coin Offering. This leads to the conclusion that, in both jurisdictions, there exists no legal certainty. Meanwhile, the failure of either the United States or the European Union to regulate the crypto-assets market effectively will have spill over effects for other jurisdictions. There is, therefore, an urgent need for strengthening international standards in the regulation of crypto assets. Therefore, this article intends to contribute to the search for a necessary, appropriate, and transnational way to chart the contemporary legal landscape of Initial Coin Offerings. The most favourable form of legal convergence regarding the Initial Coin Offering should provide increased legal certainty while protecting consumers and fostering substantial investment in innovation.

Keywords: crypto-assets, blockchain, harmonisation, token, ICO.

Introduction

At present, the topic of the legal regulation of Initial Coin Offerings (ICO) is the subject of ongoing academic interest. Being a global cross border phenomenon, ICOs provide a way for entrepreneurs to fund their new projects by pre-selling their tokens or coins to interested investors across the globe. Broadly speaking, the crypto market has grown tremendously over the past years and continues to flourish during the COVID-19 pandemic. The whole world has benefited from this growth, as e-commerce platforms provide unique benefits concerning services or alternative payment instruments for companies. At the same time, the blockchain economy is seen as a catalyst for social issues on topics ranging across privacy, product liability, consumer rights and tax law (Zetzsche et al., 2020, p. 309). This raises many concerns in the context of a regulatory framework. The arguments in favour of regulating digital platforms flow from the following main established rationales: market efficiency, financial stability, national security, monetary sovereignty and investor protection. Even though numerous studies have been published, the subject remains difficult to grasp and contextualise due to legal uncertainty and a lack of a unified approach to this phenomenon. In this regard, it is interesting to compare the regulatory approach to ICOs in the USA and the EU, clearly the top global players in the blockchain field in many respects.

The determination of differences in the legal regulation of ICO and the explanation of such distinctions is important in the process of the convergence of such jurisdictions and the effective interaction between them concerning ICO. Eventually, the key to designing a universal approach for the regulation of ICO is understanding the peculiarities regarding ICO in different jurisdictions.

[1] PhD candidate at Maastricht University, Netherlands. Current scientific interests include cryptocurrencies, the legal regulation of digital assets, and initial coin offerings (ICO).

Meanwhile, the absence of a clear regulatory approach at a national level could complicate the effectiveness of regulatory actions and could give rise to regulatory arbitrage. Therefore, a coordinated and agreed international approach is vital, which will contribute to the formation of a comfortable environment for the blockchain community. In particular, the lack of a global universal approach to blockchain could cause a lack of user confidence in digital assets, which would challenge the development of an innovative digital business. On the contrary, harmonised clear legal regulation should support innovation and ensure a high level of consumer protection in this area. In turn, it should help crypto-asset service providers to scale up their activity on a cross-border basis, simplify their access to the banking sector and provide financial stability and increase consumer protection (Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937, 2020).

The main purposes of this article are: (i) to conduct a comparative study of the legal landscape for ICOs in the EU and the USA; and (ii) to produce an overview of different forms of harmonisation and propose the optimal path, with an emphasis on the scope of future harmonisation of ICO rules as well as the fundamental principles which should be common across the globe.

Cross-cultural experiences should help to establish optimal international standards in the sphere of ICO, contributing to the further development of this way of collecting money and sourcing financing. In this light, the comparative law method will be of use, the essence of which is the act of comparing the law of one country to that of another (Eberle, 2009, p. 452). Comparative law is used to explain why there are different answers to (functionally) equivalent legal questions and what the argumentation is behind those answers (Gestel & Micklitz, 2011, p. 21). Clearly, this comparative research is not only within the realm of comparative law, with the primary goal of examining other legal systems of different countries and determining their similarities and differences; it is comparative mostly in the sense that comparative analysis of the existing national rules in the USA and EU is a necessary step in order to move on to attempts at possible international harmonisation. In other words, my intention is to understand how much the international community can learn from the USA and EU to further develop a uniform approach towards ICO regulation

For practical reasons, this research is limited in several ways. First, it examines only the legal aspects of ICO in commercial and consumer settings. Second, this paper does not tackle any aspects of money laundering, criminal law, financial regulation, antitrust and tax law (corporate income tax, personal income tax, value added tax), or accounting.

1. Divergences between US and EU Laws

The following section illustrates the relevant differences between American and European approaches to crypto assets.

1.1. Different applications of securities laws to ICOs

The compared jurisdictions are based on completely different approaches to the term *token*. The USA uses the investment-based approach; the pivotal term here is ‘investment contract’, under Section 2(a)(1) of the US Securities Act of 1933 and 3(a)(10) of the Securities Exchange Act of 1934. Analysis of the application of the Howey test to token sales reveals that tokens with any form of investment component are classified as securities under US law. The US Howey test does not take into account transferability as a requirement for investment contracts; as such, the strict application of US security legislation is required.

Meanwhile, the EU focuses on the tradability of tokens on the capital (secondary) market under Art. 4(1)(44) of MIFiD II. Thus, EU law focuses on transferable securities. For EU purposes, case by case analysis of tokens is also the rule, based on whether a token can be qualified as a transferable security under the definition of MiFID II Art. 4(1)(44). Due to the freedom granted to Member States in transposing the definition of transferable securities into national law, substantial differences exist in terms of the interpretation of what constitutes a transferable security under the EU securities regime. In general, the token’s ability to be transferable, negotiable and standardized, depends on the certain position of each Member State.

As such, despite European efforts in terms of harmonisation, a country-by-country analysis into the legal classification of the majority of tokens is required.

In the US, analysis of the application of the Howey test to token sales reveals that nearly all tokens will pass the Howey test, with the exception of (pure) payment tokens, resulting in the classification of the token as an investment contract, and therefore a security. As such, the majority of all ICOs to date have run afoul of US securities laws by issuing and offering unregistered securities to US investors. While strict application of the Howey test will result in the protection of investors, it also results in: (i) a decrease in the amount of token offerings based in the US (relative to the total global amount of token issuances); (ii) the exclusion of US investors from participating in token offerings based in other jurisdictions; and (iii) increasing amounts of issuers opting to self-classify their tokens as securities.

Generally speaking, in contrast to the US, pure utility tokens might not be deemed transferable securities under the EU securities regime. Therefore, the EU securities regime seems to be more lenient for token issuers than the US regime (Maas, 2019, pp. 69–70). At the same time, EU legislators should consider implementing or enforcing a single definition (and interpretation) of transferable securities.

1.2. Different levels of legal fragmentation

Both the US and the EU share legal authority over blockchain policy with their constituent states. In the case of the US, however, the federal government and States have the ability to negotiate, adopt, and implement legal regulation regarding ICOs. Such States as Arizona, California, Delaware, Illinois, Vermont, New York, and Wyoming have already developed legislative regulation in the field of blockchain technologies.

By contrast, in the EU this power is shared horizontally among the institutions of the EU as well as vertically with Member State governments. The Council, Commission, Parliament, and Court share legal authority over decision-making at the regional level. In this regard, blockchain policymaking authority is shared horizontally and vertically, creating numerous access points for policy formation concerning the legal regulation of blockchain. The EU relies more on central regulation in the form of Directives that create overarching objectives within which Member States retain substantial implementation and enforcement authority. In particular, the European Securities Market Supervision Authority (ESMA, n.d.) in 2017 defined the requirements for ICOs in the EU Member States. ESMA does not prohibit ICO in EU countries, but emphasizes that ICO projects should not contradict EU legislation; for instance, the EU Prospectus Directive, according to which, if the ICO project meets the criteria of an IPO (public offering of securities), it is necessary to publish a prospectus that is pre-approved by the regulator. Moreover, EU securities regulation is applicable to ICOs with security tokens. In this respect, the Prospectus Directive, the new Prospectus Regulation, the Market Abuse Regulation and the MIFID II form the core of financial legislation across the EU.

In the US, the federal government is vested with more expansive blockchain law-making, implementation, and enforcement powers and is not constrained by questions of subsidiarity. However, at present it does not take advantage of these powers to elaborate the federal legislation regarding ICOs. In the meantime, the European Union is striving to unify the Fintech legal regulation of its Member States by, in particular, adopting the Digital finance package.

1.3. Consumer protection in the light of ICO regulation

Broadly speaking, the consumer is reasonably protected in both the US and the EU, but there exist certain differences in the peculiarities of consumer protection. In fact, consumerism is entrenched in Americans almost from birth, and determines most of the country's economic policy ("U.S. economy shrinks", 2001). The history of consumer protection in the United States concerns certain formal legal responses to crises that generate great public outrage and require a public response. This pattern began against the background of 19th century common law, which emphasized freedom of contract and caveat emptor (let the buyer beware). Over time, specific crises and political events led to both the creation of government bureaucracies with jurisdiction over specific products and practices affecting consumers and a broad array of private rights of actions where consumers can sue for

damages, injunctions, attorney fees, and litigation costs if they can show harm from illegal practice (Waller et al., 2011).

The rights of consumers are now enshrined in a plethora of formal statutory and regulatory protections at the federal, state, and local level. US consumer protection policy is mainly based on the idea that consumers should have the right to protect their own interests. This has led to an emphasis on ensuring that sellers provide complete information about their products in order to allow consumers to make informed choices and ensure access to justice (Corones et al., 2016). The main goal of consumer protection laws is to place consumers, who are average citizens engaging in business deals such as buying goods or borrowing money, on an even par with companies or citizens who regularly engage in business (Waller et al., 2011). Thus, the emphasis is on the formal nature of legal consumer rights (Waller et al., 2011). In other words, human capital is used to motivate economic growth.

However, consumer protection in the EU is considered as one of the official policies of the Union. This policy is a horizontal policy of the Union, which takes account of consumer interests in the implementation of the other official policies.[2] The EU has set up many directives on consumer law – e.g., Directive 2011/83/EU of 2011, the essential point of which is aimed at consumer information for contracts other than distance or off-premises contracts, consumer information and the right to withdrawal for distance and off-premises contracts, and other consumer rights.

To sum up, the EU and the USA represent two visions and models of consumer law. According to the American approach, consumer law is limited to responding to information failures in markets; the state plays little role in shaping standards in the market. On the contrary, the EU takes more care of consumers, considering consumer law as recognizing norms of fairness, risk spreading and protection of the vulnerable (Ramsay, 2007, pp. 39–50).

Without a doubt, regulatory dynamics are driven by context-specific social norms, including attitudes to blockchain development, which are causing a change in response from both regulators and regulated communities.

Americans 'have a different relationship with money than most other people. The American emphasis on economic conditions, consumerism, and material things makes money one of the strongest forces in society. Money is power in American society. It defines Americans' worth and status in a way unmatched elsewhere. If Americans lose money, they fear that they will lose themselves' (Gross, 1999, pp. 263–271). Conversely, material things appear to play a smaller role in the EU. Americans are encouraged by society to buy things, and also need material things in order to be valued in society. They also need a safety net if they are ultimately unable to pay for all these necessities (Hannig, 1996, pp. 175, 178).

All in all, the EU countries rely less on consumer spending to develop their economies. As societies, they focus less on money and their priority is to strengthen the rights of consumers in the EU, improve their well-being, and protect them within the framework of the main risks and threats. In this regard, the EU is less inclined to establish friendly legislation in relation to issuers. However, the United States economy is more competitive and much more capitalistic. This country is striving to develop its economy, including using the mechanisms of digitalization, and the legislation in the field of blockchain, compared to in Europe, tends to be more favourable for investors.

1.4. The number of ICOs

Figure 1 represents the percentage of ICOs in the USA and the EU based on the number of ICOs and not how much capital was raised through these ICO projects. The author used data generated by the ICO Watch List (2020), which ranks countries by the number of ICOs launched and provides information as to how much was raised through these ICO projects.

[2] In 1993, the Maastricht Treaty added a new chapter on consumer protection to be developed as a separate policy. However, four years later, the Treaty of Amsterdam allowed the adoption of measures to support, supplement and supervise the policies implemented by Member States. These measures do not have to directly and explicitly concern the internal market.

Country	% of Projects	Total Raised
United States	16.13%	$811,282,744
Estonia	4.03%	$34,717,899
Lithuania	2.35%	$54,050,000
Germany	2.18%	$6,350,000
France	2.18%	$78,050,000
Spain	1.18%	$26,660,000
Poland	0.84%	$8,600,000
Slovenia	0.67%	$896,240
Liechtenstein	0.50%	$24,990,000
Luxembourg	0.34%	$5,160,000
Austria	0.34%	$5,400,000
Slovakia	0.17%	$9,410,000
Sweden	0.17%	$14,800,000

Figure 1. The number of ICOs

The USA led the world in total ICO projects with 16.3%, compared to 14.95% for the combined EU total. Moreover, the USA heads the ranking with respect to ICO funds.

1.5. Different prospects for the development of international ICO regulation

At a very basic level, the US is a more reluctant player in multilateral law and policymaking than the EU. The continuing trend within the US to repudiate and undermine multilateral agreements and negotiations has been characterized as a pattern of 'lawlessness' (Sands, 2005). The corollary of this is widespread scepticism towards international law and, more importantly, a possible passive US position on the harmonisation of ICO rules at the global level.

In contrast to the US, the EU has adopted a more active role on the international scene, engaging more widely with international institutions generally and participating in various international agreements. The EU system requires more extensive and time-consuming domestic negotiation and compromise, and creates rigidity in international negotiations. Conversely, it also gives opportunities to minimize the influence of special interest groups at the negotiation and implementation stages.

In the USA, on the other hand, the President, as the Head of State, is vested with primary authority in entering into international agreements. The Senate maintains sole authority to ratify treaties, while the judiciary retains powers of oversight and enforcement.

More generally, it seems hard to deny that the extent to which the EU and the US engage with international law and policymaking reflects important differences and ultimately will be significant for shaping global ICO legal regulation.

1.6. Different approaches to the interpretation of contract terms and the concept of good faith

Other points which have been emphasized as important regard approaches to the interpretation of the terms of the contract. In Civil law, the central point is the literal interpretation of the contract, while in Common law systems the focus is on the literal meaning of the expression of the party's will. To be more specific, English law states

that when interpreting a contract, the expression of a person's will must be identified from the true will of the party to the contract, and must not adhere to the literal meaning of the expression of will. Alternatively: neither what the parties intended nor the logical implications of their underlying agreement are considered, but rather what is customary, fair and reasonable in such a relation; and this may very well not coincide with the actual intent of the parties in the given case (Craig, 1951, p. 59).

The main priority in Civil law is literal interpretation, and therefore it is assumed that the words and expressions used in the contract clearly and unambiguously express the will of its parties. Thus, according to the Roman view: 'When words do not arouse any disagreement, the question of the will should not be allowed to be raised'. However, this omits that there is no interpretation of the will where there is no dispute between the parties regarding the words, expressions, phrases and conditions contained in the contract (*Digests of Justinian*, 2004, p. 240). Civil legislation does not take into account the true intention of the parties, but only attaches importance to what they reflected in the contract.

Another divergence between the Common and Civil legal systems lies in the approaches to the concept of good faith. In Civil law systems the negotiation, conclusion, and enforcement of contracts are subject to the principle of good faith. The application of this principle cannot be excluded.[3]

In the Common law system, good faith plays a different role. Good faith is only required in particular situations, rather than as a general requirement for the conduct of the parties. In English law, the importance of legal certainty takes precedence over the harshness a particular rule may cause in individual circumstances (Goode, 1992). The application of this principle, as set out in the case *MSC Mediterranean Shipping Co v. Cottonex Anstalt* (2015), requires specific contractual instruments. Only in the sphere of restricting the use of rights in cases where the discretion of one of the parties is provided does the High Court of Justice proceed from the directly applicable legal norm. According to the traditional view, the recognition of the general principle of good faith poses a threat to the freedom of contract, which is a basic principle of English contract law (Korde, 2000, pp. 142, 159).

Thus, another difference between the two legal traditions concerns the concept of good faith and the intent of the parties to create legal consequences. For the purpose of ICO legal regulation, the analysis of these differences is extremely important; it is a relevant and necessary tool that can be used both in legislative and law enforcement activities in solving legal problems regarding the legal regulation of ICOs. It should be noted that applying the principle of good faith to the relations related to ICOs has not been covered in detail in academic literature.

Some authors even believe that when using a smart contract, the principle of good faith is not completely necessary. This is justified by the fact that a smart contract, providing automatic fulfilment of contractual terms, excludes the possible unfair behaviour of the parties. Thus, one author noted that the blockchain manages integrity for the purposes of online business exchange (Ryan, 2017, p. 10).

'I believe that the automation of the fulfilment of obligations should not create obstacles for the implementation of the fundamental principles of good faith' and for assessing the fair allocation of the parties' rights and obligations (Bogdanova, 2019, p. 108).

The practices of using blockchain technology and smart contracts have already shown that computer programs cannot neutralize the unfair behaviour of participants in civil relations. Rather, on the contrary: they can act as an additional means of unfair behaviour. There is also the fact that the relations of the parties can develop even before the application of a smart contract (pre-contractual relations, a preliminary contract, the conclusion of a contract in the 'traditional' form, the decision on the additional application of a smart contract to it, etc.). At such stages of the development of relations between the parties, the principle of good faith cannot be ignored.

[3] A corresponding rule is also established for the obligation to act in good faith provided for in the UNIDROIT Principles. In accordance with Article 1.7 of the UNIDROIT Rules: '(1) Each party is obliged to act in accordance with good faith and fair business practices in international trade. (2) The parties may not exclude or limit this obligation'.

It is interesting to note that the application of the principle of good faith is relevant in relation to a special subject – a specialist who ensures the operation of smart contract technology. The person who provides technical support for the contract has the opportunity to make errors in the program code, which will further affect the rights and obligations of the parties to the contractual relationship to which the smart contract is applied.

The problem of using technical means is especially important at the stage of drawing up the contract and forming its terms. Parties (especially if they do not often use such technologies and are not familiar with them) will rely on technical support, in particular data mining and counting methods, to help in finding a suitable contract offer (Woebbeking, 2018, p. 110). In this case, the risks increase in at least two directions: first, the deliberate failure of a technical specialist to provide information for their own personal purposes; second, the specialist not paying attention to moments that, in their opinion, are insignificant, but that are important for the occurrence of legal consequences in the future.

The principles of Civil law, in particular good faith, remain an actual and necessary tool that can be used both in legislative and law enforcement activities when solving problems regarding the legal regulation of relations related to the use of smart contracts. However, the principle of good faith in connection with ICOs should be filled with special content.

To sum up, I believe that for the purposes of legal regulation of relations related to ICO, the Anglo-American model of good faith could be promising. The principle of good faith in relation to ICO can be limited to cases that are directly specified within the law and that are associated with a deliberate violation of the rights of the counterparty (physical coercion, misleading when concluding a contract, interpretation of the terms of the agreement of the parties, etc.). However, from the perspective of approaches to the interpretation of the terms of the contract, the Civil law approach seems more appropriate, because within the framework of the blockchain, including ICOs, only a literal understanding of the terms of the contract is possible.

1.7. Digital tokens and property rights

Various legal issues arise in the context of digital assets and crypto-assets. Regarding crypto-assets, it is usually assumed that the token can be considered as an object of property rights, even if it does not represent rights in a physical asset or rights in relation to a counterparty. However, in many EU countries purely intangible objects are not recognized as befitting of all property rights.

In the case of digital assets, many EU countries regard certain rights as intangible objects of property rights (i.e. *res incorporales*). However, very often the emphasis on the physical representation of the *res incorporales* – the paper certificate – provides a tangible, movable *res* that is a fitting object of property rights. Thus, in many EU countries, a paper document is needed to make the pre-DLT system of dematerialised company shares work. Otherwise, the property problem concerns all kinds of digital assets. On the contrary, in the USA, a more flexible approach has been formed to the definition of an object of property rights. According to it, digital assets are better suited into their general law of property.

In the light of property law, the two most important concepts should be noted, namely ownership and possession. However, the traditional understanding of these concepts is challenged by digital assets, and it is not always straightforward that these concepts can be applied to digital assets.

In some EU countries, such as Germany, intangible objects are recognised as fitting for limited property rights, but not ownership. Other EU countries have less stringent definitions of what may be the subject of ownership: they recognize property rights in resale rights. There, digital assets, representing rights to other assets or claims against a person, can be entered into the legal system without much difficulty. On the other hand, crypto-assets can still pose problems.

In general, the USA tends to adhere to the open approach, focusing more on the remedies available to the owner of the property than conceptually defining the type of thing in which property rights can be enshrined. However, here, too, innovation may be required if it is necessary to cover the entire spectrum of digital assets and crypto-

assets. As far as possession is concerned, it has to be noted that possession is defined differently in the EU and the USA. The EU countries distinguish whether possession should be a purely factual or also a legal state of affairs, and in this regard questions will arise as to the extent to which the concepts of ownership and possession can apply to digital assets and crypto-assets. Conversely, in the USA there exists a less developed concept of possession, which may therefore be more flexible (Tay, 1964, p. 476).

1.8. Tokens and their types

The technical basis of the ICO is a token: this cannot be ignored when studying this technological phenomenon. Tokens along with cryptocurrencies are the two most common blockchain-based digital assets, but it is necessary to distinguish between them. Firstly, cryptocurrencies have their own blockchains, whereas tokens are built on an existing blockchain (Ethereum, Waves, etc.). A token is a means of payment in a specific blockchain, which is based on the underlying cryptocurrency. A token without a cryptocurrency cannot exist, whilst a cryptocurrency without a token can. Secondly, unlike cryptocurrencies, the issue of tokens is carried out by a person (an individual or legal entity) – the initiator of their issue. As a rule, the issue of tokens occurs during an ICO, and their issue is limited. Thirdly, the ICO token has a wider range of applications: in addition to being used as a payment unit, they can certify various rights. In practice, they can simultaneously: (a) have purchasing power and perform the function of a means of payment in the ecosystem of a particular project or even outside it (cryptocurrency); (b) perform the role of a financial asset (as a rule, an analogue of a stock, bond, deposit or warrant) and be the object of free purchase/sale on the relevant trading platforms and exchange services; (c) certify the ownership or loan of an investor in a project/enterprise (i.e., perform the role of loans and bonds); (d) certify the rights to purchase a certain amount of services, goods, or property (so-called app coins or app tokens); or (e) be a form of reward for certain actions, etc.

According to some researchers, ‘a token personalized by its owner for future use may represent an investment, a share in the capital, a copyright, or a restaurant voucher... any amount and any asset in digital form... A token can represent anything. It can be a value, such as bitcoin, or a title of ownership’ (O’Rorke, 2018). Broadly speaking, tokens can symbolize any property right, absolute or relative: they can act as a representation of any object of law. As is pointed out in the doctrine (Novoselova, 2017, pp. 37–38), they resemble undocumented securities. The token in its essence represents a legal symbol that certifies the rights to civil rights objects by recording them in a decentralized information system, and blockchain provides the storage and accounting of tokens.

It should be noted that, at the present time, there is no unified system for classifying tokens. In the legal literature, several classifications of tokens are proposed depending on the types of functions that they perform. For example, Genkin and Mikheev (2018, pp. 223–224) provide the following classification of tokens:

- application tokens;
- share tokens;
- custom tokens;
- credit tokens.

In their *Guide pratique pour les questions d’assujettissement concernant les initial coin offerings*, FINMA (n.d.) used an approach based on the economic nature of tokens, distinguishing between such tokens as:

- **Payment tokens**, or *les jetons de paiement* (a synonym for the concept of *genuine cryptocurrencies*), which include tokens that are accepted as a means of payment for the purchase of goods or services through the intermediary, who must ensure the transfer of these property values.

- **Service tokens**, or *les jetons*, which are any tokens that provide access to digital content or a service.

- **Investment tokens**, or *les jetons d’investissement*, which are tokens that prove capital investment. In particular, tokens of this category can provide the investor with a right of obligation (claim) to the issuer or the right of membership in the corporation. In some cases, the issue of investment tokens is qualified by FINMA as accepting deposits from an indefinite circle of persons. This entails the application of the Federal Law on Banks and Savings

Banks of November 8, 1934 (Lois sur les banques et caisses, or LB), and leads to the obligation for the issuer to obtain a banking license.

Blandin et al. (2018) believe that there exist three main types of tokens: first, payment tokens, i.e., digital means of payment or exchange, known as cryptocurrencies; second, utility tokens providing digital access to certain digital platforms and services; and third, security tokens, i.e., asset-backed tokens representing ownership interests in property. This taxonomy seems to be functionally oriented and technologically neutral.

It transpires that ICO tokens represent a kind of obligation to the token owner to provide them with something in return for the invested fiat money or cryptocurrencies. Therefore, in ICOs, we are discussing security and utility tokens.

When speaking about the differences between the USA and the EU approaches to the classification of tokens, it should be noted that in the USA the main value of classification is manifested in the necessity of passing a Howey Test that allows security tokens to be identified, whereas in the EU there exists special legislation dedicated to special types of tokens (e.g. Malta's Virtual Financial Assets Act, 2018).

To conclude, the token represents a conditional virtual symbol of an object of law in cyberspace, which could exist in the real world in different forms, including a thing, a right of claim, a copyright, etc. In truth, the token is a new mechanism for confirming property rights, their transfer, and their termination, and not the essence of the rights fixed in the distributed registry system. The token is individualized by assigning this token (an object of Civil law) to the appropriate person in a way that is determined by the protocol used on the blockchain platform. As a result, the right to the object is fixed for a specific person. The identification of the copyright holder is carried out not by designating their first and last name, as in usual civil turnover, but by specifying their pseudonym/nickname or wallet number. As a result, it seems more correct at the moment to regulate tokens as special accounting systems that allow the rights to objects and the results of their transfer to be recorded.

2. Determinants of differences between US and EU ICO legal regimes

After exploring the fundamental divergences between US and EU ICO legal regulation, it is important to examine the question of why they differ. Differences between common law and Civil law legal systems and the nuances of how these systems interact can lead to profoundly different legal responses. It is impossible to comparatively analyse ICO legal regulation without examining the socio-legal context within which it arises. The EU and the US are both supreme allies and supreme competitors: they often support each other in matters of international relations, while at the same time contradicting others. The questions of which socio-legal factors drive these choices remains underexplored.

To better understand these reasons, this paragraph examines six categories of factors that influence the ICO legal regimes in Europe and America, including: (1) the correlation of legal regulation; (2) the philosophy of ICO regulation; (3) a general overview of approaches concerning ICO regulation; (4) the correlation between national and international law; (5) the types of legal systems; and the (6) peculiarities of legal technique.

2.1. The correlation of legal regulation

2.1.1. The relationship between federal and State law in the USA

The United States is a federal State in which the main question concerns the relationship between federal and State laws. The Tenth Amendment to the US Constitution, adopted in 1791, clearly resolved this issue, according to which 'the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively'. In other words, any power that is not explicitly granted by the U.S. Constitution to the federal government is reserved to the States and not available to the federal government.

This principle has always been in effect: legislation falls within the competence of the States; the competence of the federal authorities is an exception, which should always be based on a specific article of the Constitution.

Consequently, States have a large degree of freedom, which indicates a significant decentralization of public administration. Moreover, even on the issues on which Congress legislates, States are given a certain competence, termed residual competency. States are allowed to legislate on these issues, but are prohibited from adopting provisions that are contrary to federal law; however, it is not forbidden for them to supplement federal law or fill existing gaps in it. The principle of the residual competence of States has certain boundaries: namely, even in the absence of federal laws, States cannot legislate contrary to the spirit of the Constitution (René, 1996). Thus, it seems that in the most general terms, the mechanism of this interaction is as follows: federal laws regulate a relatively narrow range of issues, and most of the rules are contained in State legislation.

2.1.2. The relationship between EU law and Member States law

The European Union is an integrative supranational organisation with sovereign States as its Members. Therefore, the question of the relationship between European (communitarian) and national law deserves particular attention. Over several decades of the EU's existence, special legal mechanisms have been developed for interaction between these systems, including resolving conflicts between the norms of different levels.

EU legal regulation is based on the principle of supremacy of communitarian law and its direct effect and uniform application in the Member States. However, even in this organisation, characterized by perhaps the highest degree of integration among all supranational systems, the question of the correlation of such norms is not so clear. At present, the doctrine still raises the question of the appropriateness of the EU's Rule of Law principle (Ritleng, 2009, pp. 677–696). As such, the relationship between the EU and national legal systems is based on the rule of law of the European Union (Kwiecień, 2005). As a rule, the principle of supremacy is proclaimed in national legislation, while in European law it is directly enshrined in acts of the European Union and is supplemented by the principle of direct action (Jacqué, 2007, p. 10). Thus, EU law combines both classic and specific features of international law, establishing the principle of supremacy in acts of the supranational organisation itself.

At the national level and at the level of the European Union, there exist different approaches to resolving legal conflicts. For the European Court of Justice, the EU's Rule of Law principle applies to any national rule, including constitutional ones – otherwise, the very essence of this principle simply loses its meaning. At the same time, it is difficult for a national constitutional judge to abandon the application of the Constitution in the event of its conflict with EU law. In this regard, in the literature one can find reference to the dual perception of this principle by national courts: the emergence of the doctrine of counter-limits (*controlimiti*). This doctrine originates from Italy, where it initially denoted restrictions on the application of the principle of the supremacy of communitarian law (Salmoni, 2003, p. 289). According to it, the EU's Rule of Law principle is limited by two factors: the constitutional provisions that form the constitutional core or constitutional identity of the state, and the limits of competence of the European Union itself. The constitutional courts of the participating countries adhering to this doctrine (first of all, the German Federal Constitutional Court) declare their right to exercise constitutional control of those EU acts upon the adoption of which the European Union acts beyond its competence (Jacqué, 2007). Therefore, according to the doctrine of counter-limits, the EU's Rule of Law principle, by its very nature, assumes that Communal law has priority over all national norms, including constitutional ones. As a general rule, this provision is not disputed by States as it stems from the consent (common will) of the Member States to participate in European Union. At the same time, such an agreement does not mean a rejection of the key elements of national constitutional identity (Ritleng, 2009, pp. 677–696).

Hence, the courts today remain the main tool for resolving conflicts between national and supranational norms. In this regard, the linkages between the European Court of Justice (ECJ) and national courts are vital to the enforcement of EU regulation.

2.2. The philosophy of ICO regulation

The United States is the largest economy in the world – a developed country with a steady demand for innovation in the middle class. The United States has always been considered a generator of original innovations with a technologically advanced high-tech sector, a developed service sector, and a powerful internet segment. Thus, for the USA, the formation of the digital economy and associated markets was organic and, in a certain sense,

evolutionary in nature. The growth of the digital economy was based on the accumulated institutional, technological and competence potential, and followed pre-planned market trends, which ensured its success (Danilin, 2019).

First, many American platforms and other digital companies are developing approaches that appeared during the internet revolution of the 1990s. In this sense, the high values of the digital development of the United States – a pioneer country of new technologies – are understandable. Equally important for success is the fact that new technologies and solutions often follow long-established market trends or even serve specific, already existing markets, implementing traditional services on a fundamentally new technological basis and with business models of the digital era.

These statements are fully applied to blockchain technologies, which, despite being a new phenomenon, are fully consistent with the trends in the development of the financial sector (the growth and acceleration of electronic transactions, their higher security, etc.). Interestingly, back in 1999, Nobel laureate Milton Friedman, in one of his resonant interviews, predicted the rise of new financial technologies: 'One thing that we lack, but which will soon be developed is reliable electronic money, a method by which it will be possible to transfer funds from A to B on the internet, even if A and B are unfamiliar' (Friedman, 2013).

Now, the United States is one of the world leaders in the digital economy. Taking a leading role in its development, Washington proceeds from the fact that the digital economy plays an important role in ensuring the future success of the entire American economy, is a source of economic growth, and is a key element in improving the competitiveness of the United States. According to American experts, the introduction of blockchain technologies into production and everyday life provides huge opportunities, allowing businesses to improve technological processes, reduce product release times, reduce production costs, and improve interaction with consumers. Those consumers, in turn, receive access to a wider range of commercial offers (US Department of Commerce, 2016).

The EU is also concerned about remaining behind technologically and is making a concerted effort to craft new regulations that will affect Big Tech. Naturally, Europe wants to reassert its power in a competitive economic market. At the same time, it wants to humanise the digital world by putting strict limits on the use of data, setting clear boundaries on how people and machines work together.

The current task of the European authorities is to create a single digital market in the European space (Digital Single Market). One of the steps to achieve this goal was the creation of a pan-European advisory platform at the beginning of 2018 – The EU Blockchain Observatory and Forum. The Forum consolidates different participants in the market of innovative technologies: state governments, financial institutions, developers, start-ups, as well as large businesses investing in innovations. The main idea of The EU Blockchain Observatory and Forum is to develop a unified position on blockchain technologies in Europe based on the platform. To do this, participants are given the opportunity to share their experience, hold debates, and put forward initiatives, but the main direction of the Forum is the development of ways to harmonise innovative technologies in the conditions of traditional social, legal and commercial systems. Meanwhile, the participation of civil society is crucial to ensure and maintain the democratic potential of decentralized technology. This indicates the need for coordinated regulation within the EU for the sector, given the introduction of technology without regard to national borders.

The EU's approach to tech regulation was also defined in 2020 with the establishment of the Digital finance strategy (*Digital Finance*, 2020). It is noted that consumers must be protected against risks stemming from increased reliance on digital finance. The introduction of digital finance will help the overall digital transformation of economy as well as society. This will bring significant benefits to both consumers and businesses. The two main objectives of promoting digital finance are to create opportunities to develop better financial products for consumers as well as to support Europe's economic recovery after the COVID-19 crisis.

In addition, it is worth mentioning the position of European institutions regarding digital innovation. For instance, in the report on digital finance from the European Parliament, it is pointed out that in Europe, digital finance will have a key role to play in terms of innovation and breaking down cross-border barriers. Bearing in mind the current COVID-19 outbreak and the associated growth of the use of digital means for consumers, investors, and

financial institutions in dealing with finance, FinTech will continue to grow in both size and importance to the EU economy.

According to the recommendations of the Capital Markets Union High-Level Forum, working towards a well-functioning Capital Markets Union is one of the top priorities in Europe. Without it, and strong support from the highest political level, Europe and the Member States will not be able to tackle the huge challenges of sustainable transition and ageing of our societies. To achieve this, markets need to be highly integrated for capital to flow freely, both domestically and cross-border, without distorting competition to the benefit of both citizens and businesses (Financial Stability, Financial Services and Capital Markets Union, 2019).

In addition, in the SME strategy for a sustainable and digital Europe, it is pointed out that the goal is that Europe becomes the most attractive place to start a small business, make it grow, and scale up in the single market.

To sum up, the EU has historically taken a firmer approach to tech power, using the concept of the enlargement of the application of blockchain technology whilst at the same time considering the challenges which FinTech entails, and risks in such fields as financial stability, financial crime, and consumer protection. Therefore, among European countries and at the EU level, a particular focus is on developing a legislative framework that could combine appropriate oversight and equal treatment of investors and consumers, mitigating financial stability risks. Meanwhile, the development of the digital economy in the US is primarily closely connected with the importance of maintaining and strengthening the country's dominance in the world economy market.

2.3. A general overview of approaches concerning ICO regulation

Not all EU Member States and USA States view the phenomenon of ICO from the same perspective. A general analysis of the situation in the United States and the EU reveals that legal uncertainty continues to prevail.

In the USA, a clear division between States with strong blockchain regulation and states with friendly attitudes to blockchain can be observed. The majority of US States want to profit from the business stimulus created by blockchain technology. Moreover, these States compete with each other to attract business from the point of view of developing the most favourable legislation for ICOs. On the contrary, some States stand for compulsory licensing in order to protect investors. Both strategies have a logical rationale, but both exhibit different points of view.

In general, the European Union has a positive attitude towards blockchain. Unlike the United States, in the European Union, the positions of States are divided into the following:

- States which conduct a very blockchain-friendly policy and adopt special laws;
- States which limit themselves to a lack of regulation, warning of the risks or encouraging activities using blockchain based on the recommendations of regulators.

In the latter, the leading role is played by local regulators who, in the absence of special legislative norms, issue guidelines on ICOs and crypto-assets based on the applicable norms of current legislation. Such explanations are published by the regulator, which is responsible for the activities of financial markets, as well as investment and banking.

2.4. The correlation between national and international law

Historically, even when directly engaged in international conflicts, US citizens have retained a primary focus on matters of domestic politics. As a consequence, international issues have traditionally received less popular attention and critique than domestic issues, leaving the politics of international affairs vulnerable to excessive influence by special interest groups (Nye, 2002, p. 349). As a result, in the wider field of international law, the US has refused to participate in many international treaties.

The role of the EU in the international arena has expanded exponentially in recent decades. Drawing upon the underlying objective of 'assert[ing] its identity on the international scene', as articulated in Article 2 of the Treaty on European Union, the EU has made a concerted effort to strengthen the Community's role in international law and policy since the early 1990s (European Union, 2006). Much of the EU's success in this regard is attributable to greater intermingling of domestic, regional, and international politics. The geographic positioning, historical interdependency, and political configuration of the EU predispositions European citizens and politicians to be more attuned to issues beyond domestic politics. It should also be emphasized that European politics, whether at State or supranational level, reflect a more complex conjunction of local, regional, and international issues including ICO regulation.

2.5. Civil and Common law legal systems

Common and Civil law systems are the two main governing systems, with conceptual differences. In this context, the USA legal system will be considered as an example of a Common law system and the EU legal system as an example of a Civil law system. Both systems have different roots regarding the sources of law, their use and relative importance. The Common law developed in England as a system where the body of law derives from judicial decisions, whereas the Civil law system is based on Roman law and, therefore, on statutes (Kaske, 2002, p. 395).

Experts in the field of comparative law, emphasizing the peculiarity of Romano-Germanic law, point out that it is by its nature a statutory law. The statute in this case is considered in two meanings: in a narrow sense, as a synonym for the term *law*; and in a broad sense, as a generally binding act adopted by any law-making bodies, which include the legislative and executive-administrative bodies of the State. According to David and Joffre-Spinosi (1999, pp. 74–75), 'the law is, apparently, the primary, almost the only source of law in the countries of the Romano-German legal family. All these countries are countries of written law. Lawyers here, first of all, refer to legislative and regulatory acts adopted by the parliament or government and administrative bodies. ... Other sources of law occupy a subordinate and insignificant place…'. In this context, the terms *law* and *normative legal act* are synonymous.

It has to be noted that in countries with a Romano-Germanic legal system, the role of judicial precedent as a source of law is insignificant in comparison with a normative legal act. Judicial precedent, as a rule, has been recognized and is recognized in the continental legal family, but as a secondary, not a primary, source of law. In this case, it is possible and necessary to talk about the priority of the law over the precedent – in this regard, the main role in the formation of the law belongs to the legislator.

This is contrary to the reliance on case law (judge-made law) in Common law jurisdictions. Common law is defined as the unwritten body of law derived from judicial decisions, rather than from statutes and from local customs (Morrison, 2001, pp. 63–64). Therefore, Common law is 'judge-made' by applying legal principles developed in past cases to similar situations, and by creating precedents via cases or through the interpretation of statutes in accordance with the intention of parliament (McDowell & Webb, 1998, pp. 60, 69).

All in all, it has to be noted that differences between Common and Civil Law jurisdictions are apparent. The legal system of a country strongly influences the current regulatory environment, especially on controversial issues. The Civil law legal system is dominated by 'written law', and the provisions of statutes try to cover every area of law. Common law, on the other hand, provides a system of *stare decisis*, where judges should decide their cases having regard to prior decisions – monistic law. Moreover, they are different in respect of the relative importance of case law and statute law as sources of positive law, the role of judges in the law-making process, and the methods and approaches used by both judges and attorneys to the solution of problems (Bailey, 1978, pp. 130–133).

In the American legal system, due to a traditional principle called case law, courts have not only the right to apply the law, but also the right to interpret and make binding decisions. In this sense, courts adopt case law to the extent that their decisions are cited as precedents in future cases. This makes it easy for courts and judges to guide the law in the relevant area.

2.6. The peculiarities of legal technique

In the United States Code (General Provisions, 2012), there is the consolidation of certain legal and technical rules concerning legislative techniques, as well as definitions that extend their effect to all laws. In relation to this, we can say that the consolidation of definitions and rules for the use of terms that apply to all legislation makes it possible to achieve qualitative uniformity in the implementation of legal norms. The importance of choosing the right place for placing definitions in the text of a regulatory legal act is obvious. In this regard, it is necessary to note a certain trend in law-making, which allows us to speak with confidence about the possibility of codifying subordinate normative acts.

3. Prospects of legal harmonisation

Harmonisation, being a broad concept, could be understood as 'a process aspiring to unification or maximal approximation of two or more different elements' (Fox, 1992, p. 594). Otherwise, the process of harmonisation has the purpose of combining different parts and elements of subjects. Eventually, this creates the feeling of a serial unity (Boodman, 1991, p. 699). Therefore, harmonisation is interpreted as a union of several objects, not interfering with the individuality of separate components.

The practical result of harmonisation is connected with the structure of separate constituent parts (Leebron, 1996, p. 65). The main feature of harmonisation is unification in one entity of a variety of elements. Regarding ICO regulation, harmonisation should be interpreted as a form of seeking the optimal rules and principles which would enable a balance between different legal systems in terms of crypto-assets and blockchain technology to be provided.

The co-existence of several legal systems can trigger processes of harmonisation. In connection with this, the author has previously analysed the approaches of the United States and the European Union to ICOs, as representatives of Common and Civil law countries. The author concluded that the framework of the compared jurisdictions regarding the issue of legal regulation of ICOs is substantially different, identifying the root causes and differences between them. In this regard, it is important to consider existing (and potential) intersects in crypto-asset regulation.

Actual sources of differences could be classified into one of the following categories:

- Incoherent terminology and lack of a common approach in the EU and the US regarding the term token and the possibility of recognizing the token as an object of property rights.
- The conceptual background underlying the ICO framework. The USA adheres to the consumerist approach, while the EU takes account of consumer interests, protecting and strengthening their rights.
- Different legal systems in terms of approaches to the interpretation of the terms of the contract (the binding nature of offers, the concept of good faith, etc.).
- Overlapping requirements in local and federal (or national and supranational) legislation. For instance, a division between those Member States that adopt an equivalence-based approach and those Member States adopting a characteristics-based approach towards the implementation of the definition of transferable securities in their respective legal systems. Some States in the USA stand for the compulsory licensing of crypto-asset activities (New York State), while Wyoming's state legislature has passed a bill that would exempt certain types of crypto-assets from some of the State's securities and money transmission laws.

Given a lot of differences between countries, some scholars are critical of the possibility of global regulation as the solution for the ICO marketplace. According to Musheer and Watt (2018) it is difficult to envisage how these diametrically opposed regulatory standards are capable of reconciliation. However, it is difficult to agree with such a statement. According to the author, harmonisation can ensure useful assistance for regulators in unifying their approaches to ICO regulation. Norms which would be elaborated on the global level would serve as the framework for national legislation and the application thereof. The priority of international legal regulators is now becoming generally recognized in national legal systems, and 'globalization strengthens the internationalization of national norms and the role of new international and integration acts' (Tikhomirov, 2013, p. 92). As David and

Brierley (1985, p. 25) noted, '... the formulation of the legal rule tends more and more to be conceived in Common law countries as it is in the countries of the Romano-Germanic family. As to the substance of the law, a shared vision of justice has often produced very similar answers to common problems in both sets of countries'.

However, in order to make global regulation work in practice, elaborating rules and principles should become a process of mutual integration – a natural convergence (Skakun, 2015). Countries should accept each other's peculiarities and find compromises, relying on that which best suits the blockchain environment and the interests of the participants (Vranken, 2010, para. 1002). At the same time, international cooperation should not generate negative externalities for domestic legal systems. Before discussing the solutions to the above-mentioned problems of possible harmonisation, let us first examine the toolset available to legislators, i.e.: By which methods should legal convergence be pursued?

3.1. Available international models for the ICO legal regime

Having examined the reasons for harmonisation in the fields of crypto-assets, we now move to consider the methods through which such harmonisation ought to be pursued. In essence, the purpose of harmonising ICO legislation is to replace current diverse laws in different jurisdictions with a unifying legal regime. This can be done in several ways and with different types of tools. We can broadly distinguish several forms of harmonisation of law, namely soft law (informal guidance, recommendations, summaries of practices) or hard law (supranational regulation, international conventions). Multilateral international conventions have the goal of introducing a single legal solution within the different jurisdictions of the Member States that that have decided to accept the convention. Model laws are used to provide a guide which may be used by different states, but there is no legal obligation to apply it. The harmonising effect of model laws depends on the degree to which states change their laws to fit the model. In the European Union, the binding Directive, as a supranational regulation instrument, is also possible, and requires Member States to amend their laws according to the basic principles of the Directive.

Our focus is on international conventions and model laws, with the final aim of searching for the most optional instrument. In finding solutions, states face a compromise between them, as each have advantages and disadvantages.

3.1.1. Achieving international harmonisation through soft law

The subject of soft law has always been a difficult one for the global regulatory community. On the one hand, it does not represent a law in the fullest sense of the word. Prosper Weil stated that these obligations 'are neither soft law nor hard law: they are simply not law at all' (Guzman & Meyer, 2010, p. 171). The rules of soft law represent a consensual exchange of promises on a certain issue, declaring at the same time that these promises are nonbinding. Soft law is a set of guidelines for the international legal community, operating in line with consensus.

On the other hand, undoubtedly, the soft law approach has several benefits. For example, it allows States to use a more efficient method of amending the law as circumstances change. Soft law can ensure negotiation, comparisons, and learning (Goldsmith, 1998, p. 1199). Legislators have flexibility in managing their own affairs because they do not assume any legal obligations, and parties can learn about the impact of certain policy decisions over time (Abbott & Snidal, 2000, p. 423). Soft law offers a degree of flexibility and adaptability in accordance with the needs of each State that facilitates negotiation. This can especially be the case with respect to blockchain technology, as it allows actors to learn about the technology and the impact of any particular rule gradually.

The regulation of ICO markets is complicated because blockchain technologies are constantly changing, either due to innovations or the technological capabilities of participants. By avoiding formal legality, parties to arrangements could observe the influence of rules in practice so as to better evaluate their advantages, retaining the flexibility to avoid any unpleasant consequences that these rules may retain. In the blockchain context, soft law makes it possible to experiment, and, if necessary, change path when new circumstances arise.

Moreover, the rules of soft law are to a greater extent combined with the concept of blockchain, assuming

anonymity of the participants and no state interference. Finally, soft law ensures a cheaper way of consensus reaching (Gersen & Posner, 2008, pp. 573, 589) – it does not need lengthy participation by heads of state or ratification procedures. Instead, agreements can be reached between administrative agencies. Therefore, the process of negotiation becomes relatively easily (Lipson, 1991, p. 500).

It has to be mentioned that the effectiveness of soft law options in reaching the ultimate aim of harmonisation of ICO regulation is limited. Sometimes commitments can be weak, because soft law represents a set of observations made by members at international forums and can serve as an intermediary for a more complex regime. These agreements are not legally binding compared with international treaties and conventions. Additionally, it is difficult to foresee how completely different regulatory ICO standards could be harmonised through soft law mechanisms. Meanwhile, crypto-asset-related businesses have important consequences for the participants and the State, and this makes them intrinsically important. These observations suggest that in the long term, despite the advantages of soft law, global harmonisation of ICO rules will likely have to be achieved via hard law as the ICO market becomes vital for global industry.

3.1.2. Achieving international harmonisation through conventions

Bilateral and multilateral treaties or conventions are the primary hard harmonising mechanisms for solving issues between States in different fields. Hardness of law is explained by taking the law as it is by the parties without any modification (Mistelis, 2001).

The following major shortcomings of the harmonisation of ICO by international conventions could be mentioned:

(i) the long and expensive process of negotiating and preparing the convention;
(ii) the degree of unification may be limited and the differences may be irreconcilable;
(iii) the possible breaks in ratification of a convention, lasting for many years before the convention comes into force;
(iv) statutory law is subject to interpretation by the courts, and there is no guarantee that harmonised law will be interpreted identically;
(v) crypto-assets may not be described as a stable object of regulation;
(vi) difficulties related to the ubiquitous ratification of a convention; there exists the possibility of resistance, especially for smaller countries like Panama or Gibraltar, similarly to the field of international tax harmonisation.

Despite the number of drawbacks, conventions still play a major role as harmonising mechanisms. Proponents of harmonisation suggest a number of benefits of harmonisation through hard law. Firstly, conventions create certainty of law as opposed to the flexibility and adaptability of soft law. Secondly, hard law is suitable for solving issues on which individual States have completely opposite positions. For example, the applicability of securities laws to crypto-assets. Finally, hard law helps to make the obligations between States more reliable. Since treaties require a substantial level of government involvement, and, as a rule, ratification by legislative bodies, States can face reputational costs if they do not comply with their contractual obligations. In other words, States that are inclined to fulfil their obligations earn a solid reputation that helps them coordinate their actions with the parties when they need to promote their national interests (Guzman, 2007, pp. 71–111).

Generally speaking, blockchain technology would significantly benefit from an international convention. However, this brings us to the next point of this paper that will focus on how they could be improved upon to ensure their success. Their continuing success will depend on formulating the optimal scope of future harmonisation of ICO rules as well as finding the most balanced approach to the underlying principles which meet the interests of different States on the controversial issues.

Certainly, soft law instruments have their advantages for the unification of ICO approaches (easiness to accept and implement, flexibility). However, it can be said that the principal benefits of conventions, which are expressed in providing certainty of law, remain vital, especially where consumers or public interests are at stake. Only hard instruments enable a high level of legal certainty, consumer protection, market integrity, and financial stability to be provided, reducing legal fragmentation worldwide. Soft law instruments are not able to resolve

these issues, and, therefore, conventions remain vital. Meanwhile, certain steps must be taken so as to make conventions more successful instruments.

3.2. The scope of legal harmonisation

This section focuses on the scope of future harmonisation of ICO rules in the light of two main issues: (i) establishing a minimum set of common requirements; and (ii) harmonisation beyond the minimum level. The establishment of a clear level of requirements is necessary to have appropriate global crypto-asset regulation in place or to navigate and implement the relevant standards in practice.

The unique characteristics of the blockchain environment mean that its regulatory framework may rapidly become outdated and thus may need regular analysis even at the baseline level of harmonisation. This characteristic complicates the prospects of hard international law but does not eliminate them. In general, the need to amend the outlines of international conventions is an ongoing challenge and concerns not only the area of crypto-assets.

3.2.1. Establishing a baseline

This approach implies shifting away from reliance on detailed rules and depending more on broadly stated principles. The term ‘principles’ can be used to denote general requirements and express the basis of obligations that all participants should comply with. The implications of such an approach are clear: fear of overregulation and inflexibility in determining in advance the ‘final decision’ of an ICO regime, which may change suddenly for reasons such as technological improvements.

However, in the context of ICO harmonisation, the task of establishing common standards and guidance becomes more complicated due to the inability of small financial technology (FinTech) firms or consumers to interpret them. Moreover, such an approach engenders a lack of predictability regarding their performance. General principles leave much more room for debate over how to meet the aims of these principles as well as room for conflict if the legislator believes a violation has occurred. For these reasons, such a regime is not an effective option for regulating the blockchain at a global level.

3.2.2. Beyond the baseline

Once the baseline level of ICO regulation requirements is determined, one should consider developing the scope of the regulatory regime by setting detailed rules for compliance.

Thus, according to the ‘beyond the baseline’ approach, a detailed process is established. If this process is not followed, the regulation is considered to be violated. For obvious reasons, international harmonisation through such a regime, which requires the implementation of detailed mandatory provisions, is a serious challenge, and is unlikely to be accomplished in the immediate future. It must be noted that preliminary action must be taken by national States before entering into negotiations regarding establishing a convention at the international level. Such steps are needed to elaborate each party’s own regulatory approach based on the insights from a number of undertaken measures.

With this goal in mind, this article proposes the following recommendations as a step in addressing the needs of establishing global ICO regulation through detailed provisions.

Recommendation 1: a useful starting point for regulatory intervention is the registration process. The purpose of registration is to specifically obtain further understanding from participants. At present, not all jurisdictions around the globe have their own blockchain regulation. Therefore, it is necessary to propose to implement, at the national level of the States, the registration requirements for crypto-asset service providers. Registration should be required for all companies performing crypto-asset activities.
Recommendation 2: monitoring crypto-asset trading platforms by authorities.
Recommendation 3: following registration and monitoring, authorities will assess whether crypto-asset activities could fit into existing regulatory frameworks. Where no legal rules exist for certain crypto-asset-related activities,

the regulatory framework will be considered to decide where changes are required. This could either be in the form of amendments to existing regulations or the drafting of new regulations.
Recommendation 4: active involvement of technical experts in the blockchain field.
Recommendation 5: exchange of effective regulatory practices for scaling in the global space
Recommendation 6: elimination of dual regulatory framework in multiple-level jurisdictions (if necessary).
Recommendation 7: formation of a new global organisation that would present a comity, with representatives of States and national authorities. Members of such an organisation would cooperate closely, and having this kind of interaction as everyday practice would make it easier to prove facts that cannot be changed without a trace. The ultimate goal of this organisation should be the development of best practice standards and a common global ICO framework.

It is the view of the author that only via a gradual and complex study of the blockchain phenomenon can a workable international convention be developed. A phased development of regulatory practice is necessary, taking into account the dynamics and scale of the blockchain phenomenon.

3.3. Principles of harmonisation

At present, the US and the EU are the leaders in the technological area, representing Common and Civil law approaches to ICO regulation. Comparative diagnostics of the regulatory framework in both jurisdictions has revealed that there are deep differences between their legal approaches to the crypto-asset legislative framework. In some cases, rules that are formally the same are understood and applied differently. However, this does not mean that there can be no convergence: convergence does not call for uniformity. "Thus, even if, for example, differences in legal culture persist and transfers of legal rules do not lead to identity, there can still be convergence" (Arvind, 2010, pp. 65–88).

A comparative analysis of the United States and the European Union's ICO legal regulation in the previous section allowed the author to highlight certain principles and rules on which an international convention should be based so as to be regarded as a successful harmonising instrument. These differences could be transcended if this convention were to contain specific rules or unambiguous principles.

A convention should also build a bridge between the Common and Civil law systems, to be interpreted and applied identically in practice. The unification of private rules between Civil and Common law jurisdictions could be achieved by agreeing on certain rules which represent a compromise of Civil and Common law rules.

It is the view of this article that the following principles for regulating crypto-assets should form the basis of an international convention:

Principle 1. Uniform interpretation of basic terms and concepts related to the use of digital assets.
Unifying definitions and creating consistent terminology that is equally understood by all participants are important steps in seeking global regulation. Broad definitions cause uncertainty in the digitally networked environment. Therefore, the first need is to introduce a common terminology in the first section of the ICO convention by approving a unified glossary containing basic terms and definitions in the field of crypto-assets and blockchain. With regard to the classification of tokens according to their nature, the common approach should also be applied. When tokens share common elements with securities, it is especially important to determine whether a token is a security or a utility token. In some cases, tokens can have security elements, and the determination of such tokens should be based not only on the security framework but also on the rules, considering the overall functioning of the token.

Principle 2. Maintaining a balance between risk control and the implementation of innovative incentives for blockchain development, including:
(i) ensuring transparency and flexibility of the regulatory environment of the Member States in order to attract investment and reduce the scale of shadow transactions;
(ii) inclusion of self-regulatory organisations and professional associations in the system of regulation of economic activity in the field of digital assets.

Principle 3. Human-centric approach
At present, disparities among the USA and the EU in regulating consumers' rights could create significant barriers affecting the harmonisation of ICO regulation. This article proposes to apply the EU approach to consumer protection, which assumes securing human rights as an essential ultimate objective of the State.

A human-centric approach comes from the principles of liberalism and republican thought dating back to the Enlightenment, the early Middle Ages, and ancient Greece (Deudney, 2006). It considers people, regardless of nationality, as the main objects of security. States should perform a supportive role, protecting individuals' rights and wellbeing.

A human-centric approach should be based on the following rules:
(i) Disclosure of contract terms.
Smart contracts should include legal obligations on sufficiently informing the consumer in the context of mandatory website disclosure of agreement provisions.
(ii) Online enforcement.
Smart contracts should be coded to take into consideration the most common violations of contract or consumer rights in order to provide the contract's self-performing mechanism.
(iii) Judicial protection of consumers.
It is necessary to provide consumers the right to file a claim in the national offline court. There is, therefore, an urgent need for national courts specializing in ICO and blockchain issues. In my view, a well-functioning court should meet at least three requirements: the judges must have expertise and be experienced in dealing with such cases; the courts must be able to arrive at a speedy decision; and, this must be possible at low cost.

Principle 4. Transparency
In advance of the token sale, each token seller should have to disclose certain information:
(a) to reveal the code on the basis of which blockchain is based;
(b) to publish vital information about the company and the group of developers, also stating which person acts as the issuer;
(c) to state if any tokens were mined before the ICO;
(d) to indicate the beneficial owners of the tokens;
(e) to specify what rights and obligations are embodied by the tokens;
(f) to give a detailed overview of the purpose and development steps that are supposed to be funded by the collected investment.

These six key elements of token disclosure should provide necessary transparency concerning ICOs.

Conclusion

In conclusion, in the face of inexorable globalization and the trans-border nature of ICOs, the elaboration of a common regulatory approach to such phenomena seems irresistible. It is true that at the present time both the US and the EU are following different concepts in the field of a regulatory approach to ICOs, but in both jurisdictions there still exists no legal certainty. Meanwhile, the failure of either the United States or the European Union to regulate the crypto-assets market effectively will have spill over effects for other jurisdictions. There is, therefore, an urgent need for strengthening international standards in crypto-asset regulation. The analysis carried out by the author leads to several conclusions.

First, it is important to understand what differences exist in both systems (EU and US) regarding ICO regulation. This article shows that there exist certain differences which may create obstacles to the harmonisation of approaches:

- There is a difference in the application of the current securities regimes in the EU and US. For any token issuance, in any jurisdiction, one will have to examine the rights that the specific token grants to investors to make any informed judgment as to whether the token sale will fall under securities laws. These differences are caused by the correlation of legal regulation between EU law and Member State law; federal and State law in the USA.

- In Europe, blockchain legislation and policy emanates from centralized sources to a greater extent (with the exception of a few countries with their own ICO regulation). In contrast, the US system of blockchain law and policy is fragmented and relies on decentralized modes. Such divergences in regulatory choices are stipulated by multi-level legal systems (federal States and a supranational legal system).

- There are different approaches to status and judicial decisions. In the USA, the constant development of ICO regulation is possible because legislation can be defined or changed by judges through court decisions. However, different approaches to the interpretation of the legal rules from judges could introduce a certain level of inefficiency in the field of ICOs. In the EU, on the other hand, any modification must be carried out by the legislative authorities using special procedures, which prevents the process of expanding the use of blockchain technology. At the same time, this makes ICO legislation more sustainable for ICO participants. Such conclusions are related to different legal systems, namely those of Common and Civil law countries.

- Socio-legal factors shape ICO law and policymaking in different ways. Thus, the willingness of the US to develop an ICO legislative framework is closely connected with the ambition of strengthening the country's dominance in the world economy. This overwhelming focus on economic well-being also plays a key part in shaping ICO legislation. EU policy is similarly affected by economic considerations, but for the EU, in addition to the economic factor, it is essential to ensure the rights of consumers. Overall, EU policy is primarily designed to protect consumer welfare, whilst that of the USA is more focused on economic power.

- The USA leads the EU in total ICO projects and ICO funds raised due to more friendly legislative regulation in the field of blockchain technologies.

Second, it must be kept in mind that harmonisation can take many different forms. Such instruments of harmonisation as international conventions and model laws are both compatible with blockchain issues. However, due to the shortcomings of soft law, including the non-binding and complex nature of ICO phenomena, the method of international convention seems indispensable for the global regulation of ICOs. This convention should present the first international treaty aimed at global ICO regulation, and any future ICO convention has to keep up with the pace of social and technological change. Taking into due consideration the peculiarities of the existing legal system and the differences in their approaches to ICO regulation, this convention should represent a link between these approaches.

Third, regulators must be prepared to implement an international ICO convention. Therefore, the author came to the conclusion that harmonisation should start with small steps, such as considering emerging international practices and ensuring international cooperation on ICO issues.

Ultimately, one hopes that the U.S. and the E.C., as well as authorities from other jurisdictions, will converge upon a clear, consistent, and flexible approach to ICO regulation that takes full account of the problem of uncertainty in this area.

References

Abbott, K. W., & Snidal, D. (2000). Hard and soft law in international governance. *International Organisation*, *54*(3), 421–456.

Arvind, T. (2010). The 'transplant effect' in harmonisation. *International and Comparative Law Quarterly*, *59*(1), 65–88. https://doi.org/10.1017/S0020589309990017

Bailey, J. F. (1978). Civil law and the common law: Some of the similarities and differences between the two systems. *International Journal of Law Libraries*, *6*(2), 117–133. https://doi.org/10.1017/S0340045X00012703

Blandin, A., Cloots, A. F., Hussain, H., Rauchs, M., Saleuddin, R., Allen, J. G., Zhang, B., & Cloud, K. (2018). *Global cryptoasset regulatory landscape study*. Cambridge Centre for Alternative Finance. Retrieved from https://www.jbs.cam.ac.uk/wp-content/uploads/2020/08/2019-04-ccaf-global-cryptoasset-regulatory-landscape-study.pdf

Bogdanova, E. E. (2019). Problems of using smart contracts in transactions with virtual property. *Lex russica*, No. 7, 108–118. https://doi.org/10.17803/1729-5920.2019.152.7.108-118

Boodman, M. (1991). The myth of harmonisation of laws. *The American Journal of Comparative Law*, *39*(4), 699–724. https://doi.org/10.2307/840738

Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on An SME Strategy for a sustainable and digital Europe (2020). COM/2020/103 final. Retrieved from https://ec.europa.eu/info/sites/info/files/communication-sme-strategy-march-2020_en.pdf

Corones, S., Christensen, S., Malbon, J., Asher, A., & Paterson, J. M. (2016). *Comparative analysis of overseas consumer policy frameworks* [Report]. The Australian Government, the Treasury, and Queensland University of Technology. Retrieved from https://consumer.gov.au/sites/consumer/files/2016/05/ACL_Comparative-analysis-overseas-consumer-policy-frameworks-1.pdf
Craig, P.M. (1951). Structural differences between common and civil law. *Seminar (Jurist*), *9*(1), 50–71.
Danilin, I. V. (2019). Development of the digital economy of the USA and China: Factors and trends. *Global Infrastructure in the Digital Age*, *12*(6), 246–267. http://dx.doi.org/10.23932/2542-0240-2019-12-6-12
David, R., & Brierley, J. E. C. (1985). *Major legal systems in the world today: An introduction to the comparative study of law* (3rd ed.). London: Stevens & Sons Ltd.
David, R., & Joffre-Spinosi K. (1999). *Basic legal systems of modernity* (translated by V. A. Tumanova). Moscow: International Relations.
Deudney, D. (2006). *Bounding power: Republican security theory from the polis to the global village*. Princeton, N.J.: Princeton University Press.
Digests of Justinian, Vol. 5 (Translated from Latin and edited by L. A. Kofanov). (2004). Moscow: Statut.
Digital Finance: Emerging risks in crypto-assets - regulatory and supervisory challenges in the area of financial services, institutions and markets [Procedure file No. 2020/2034(INL)]. (2020). Retrieved from https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2020/2034(INL)&l=en
Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU. OJ L 173, 12.6.2014, pp. 349–496. http://data.europa.eu/eli/dir/2014/65/oj
Eberle, E. J. (2009). The method and role of comparative law. *Washington University Global Studies Law Review*, *8*(3), 451–486. Retrieved from https://openscholarship.wustl.edu/law_globalstudies/vol8/iss3/2
ESMA. (n.d.). Search term "ICO". Retrieved from https://www.esma.europa.eu/search/site/ICO
European Union — Consolidated Versions of the Treaty on European Union and of the Treaty Establishing the European Community (2006). OJ C 321E, 29.12.2006, pp. 1–331. Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2006:321E:TOC
Federal Law on Banks and Savings Banks of November 8, 1934 (Lois sur les banques et caisses, or LB). Retrieved from http://www.admin.ch/ch/f/:rs/952_0/index.html.
Financial Stability, Financial Services and Capital Markets Union. (2019). *High-Level Forum on capital markets union*. Retrieved from https://ec.europa.eu/info/publications/cmu-high-level-forum_en
FINMA. (n.d.). *Informations pour les fournisseurs de prestations dans le domaine des Fintech*. Retrieved from https://www.finma.ch/fr/autorisation/fintech
Fox, E. M. (1992). Harmonisation of law and procedures in a globalized world: Why, what and how? *Antitrust Law Journal*, *60*(2), 593–598.
Friedman, M. (2013). Milton Friedman predicts the rise of bitcoin in 1999. *Youtube*. Retrieved from https://www.youtube.com/watch?v=6MnQJFEVY7
General Provisions, 1 U.S.C. § 1—8 (2012). Retrieved from https://www.govinfo.gov/content/pkg/USCODE-2012-title1/html/USCODE-2012-title1-chap1.htm
Genkin, A., & Mikheev, A. (2018). *Blockchain: How it works and what awaits us tomorrow*. Moscow: Alpina publisher.
Gersen, J. E., & Posner, E. A. (2008). Soft law: Lessons from congressional practice. *Stanford Law Review*, *61*(3), 573–627. http://dx.doi.org/10.2307/40379694
Gestel, R., & Micklitz, H. (2011). *Revitalising doctrinal legal research in Europe: What about methodology*. EUI Working Paper LAW No. 2011/05. https://dx.doi.org/10.2139/ssrn.1824237
Goldsmith, J. L. (1998). Against cyberanarchy. *University of Chicago Law Review*, *65*(4), 1199–1250. https://chicagounbound.uchicago.edu/uclrev/vol65/iss4
Goode, R. M. (1992). *The concept of 'good faith' in English law*. Roma: Centro di studi e ricerche di diritto comparato e straniero.
Gross, K. (1999). Demonizing debtors: A response to the Honsberger-Ziegel debate. *Osgoode Hall Law Journal*, *37*(1), 263–271.
Guzman, A. T. (2007). *How international law works: A rational choice theory*. Oxford: Oxford University Press.
Guzman A. T., & Meyer T. L. (2010). International Soft Law. *Journal of Legal Analysis*, *2*(1), 171–225.
Hannig, M. (1996). An examination of the possibility to secure intellectual property rights for plant genetic resources developed by Indigenous Peoples of the Nafta states: Domestic legislation under the International Convention for Protection of New Plant Varieties. *Arizona Journal of International and Comparative Law*, *13*(1), 175–252.
ICO Watchlist. (2020). ICO Statistics – By country. Retrieved from https://icowatchlist.com/geo-2/
Jacqué, J. P. (2007). Droit constitutionnel national, Droit communautaire, CEDH, Charte des Nations Unies. *Revue française de droit constitutionnel*, 2007/I, No. 69, 3–37. https://doi.org/10.3917/rfdc.069.0003
Kaske, T. (2002). The co-existence of common law systems and civil law systems in modern society: A comparison between the legal systems of New Zealand and Germany. *Canterbury Law Review*, *8*, 395–424.
Korde, R. (2000). Good faith and freedom of contract. *UCL Jurisprudence Review*, *14*, 142–159.
Kwiecień, R. (2005). The primacy of European Union law over national law under the Constitutional Treaty. *German Law Journal*, *6*(11), 1479–1495. https://doi.org/10.1017/S2071832200014450
Leebron, D. (1996). Claims for harmonisation: A theoretical framework. *Canadian Business Law Journal*, *27*.
Lipson, C. (1991). Why are some international agreements informal? *International Organization*, *45*(4), 495–538.
Maas, T. (2019). Initial Coin Offerings: When are tokens securities in the EU and US? *SSRN Electronic Journal*. http://dx.doi.org/10.2139/ssrn.3337514
McDowell, M., & and Webb, D. (1998). *The New Zealand legal system – Structures, processes and legal theory* (2nd ed.). Butterworths.
Mistelis, L. (2001). Is harmonisation a necessary evil? The future of harmonisation and new sources of international trade law. In I. Fletcher, M. Cremona, & L. Mistelis (Eds.), *Foundations and Perspectives of International Trade Law*. Sweet & Maxwell.
Morrison, W. (ed.). (2001). *Blackstone's Commentaries on the laws of England, Volume 1*. Routledge.
MSC Mediterranean Shipping Co v. Cottonex Anstalt (2015). EWHC 283, Rn. 97.

Musheer, S. A., & Watt, D. (2018). Head-to-head: Should there be global harmonisation of ICO regulation? *International Financial Law Review*, *37*.
Novoselova, L. A. (2017). Tokenization of objects of civil law. *Economy and Law*, No. 12.
Nye, J. Jr. (2002). The American national interest and global public goods. *International Affairs*, *78*(2), 233–244.
O'Rorke, W. (2018). *Blockchain, cryptoactifs, ICO: panorama des enjeux juridiques (S1 2018)*. Retrieved from https://blockchainpartner.fr/wp-content/uploads/2018/03/Blockchain-cryptoactifs-et-ICO.pdf
Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937. COM/2020/593 final (2020). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020PC0593
Ramsay, I. (2007). *Consumer law and policy: Text and materials on regulating consumer markets* (2nd ed.). Oxford and Portland: Hart Publishing.
Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC. OJ L 168, 30.6.2017, pp. 12–82. http://data.europa.eu/eli/reg/2017/1129/oj
Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC. OJ L 173, 12.6.2014, pp. 1–61. http://data.europa.eu/eli/reg/2014/596/oj
René, D. (1996). *The main legal systems of our time*. Moscow: International relations.
Ritleng, D. (2009). De du principe de du droit de l'Union. *Revue trimestrielle de droit*, No. 4, 677–696.
Ryan, P. (2017). Smart contract relations in e-Commerce: Legal implications of exchanges conducted on the blockchain. *Technology Innovation Management Review*, *7*(10), 14–21. http://dx.doi.org/10.22215/timreview/1110
Salmoni, F. (2003). La corte costituzionale, la corte di giustizia delle comunità Europee e la tutela dei diritti fondamentali. In P. Falzea, A. Spadaro, & L. Ventura (Eds.), *Le Corti costituzionale e le Corti d'Europa* (pp. 289–348). Torino: G. Giappichelli Editore.
Sands, P. (2005). *Lawless world: America and the making and breaking of global rules*. London: Penguin Books Ltd.
Skakun, O. F. (2015). Interaction of national legal systems in time and space: Comparative aspects. *Journal of Comparative Law*, 10(1).
Tay, A.E.S. (1964). The concept of possession in the common law: Foundations for a new approach. *Melbourne University Law Review*, *4*(4), 476–497. Retrieved from https://www.austlii.edu.au/au/journals/MelbULawRw/1964/17.html
Tikhomirov, J. (2013). New phenomena and concepts in comparative jurisprudence. *Law of Ukraine*, No. 3–4, 92.
US Department of Commerce. (2016). *First Report of the Digital Economy Board of Advisors*. Retrieved from https://www.ntia.doc.gov/files/ntia/publications/deba_first_year_report_dec_2016.pdf
U.S. economy shrinks (2001, October 31). *CNN*. Retrieved from http://edition.cnn.com/2001/BUSINESS/10/31/economy/index.html
Vranken, M. (2010). *Fundamentals of European civil law* (2nd ed.). Annandale: Federation.
Waller, S.W., Brady, J., Acosta, R. J., & Fair, J. (2011). Consumer protection in the United States: An overview. *European Journal of Consumer Law*, May 2011. Retrieved from https://ssrn.com/abstract=1000226
Woebbeking, M. K. (2018). The impact of smart contracts on traditional concepts of contract law. *Jiritec*, No. 1, 106–113.
Zetzsche, D. A., Birdthistle, W. A., Arner, D. W., & Buckley, R. P. (2020). Digital finance platforms: Toward a new regulatory paradigm. *University of Pennsylvania Journal of Business Law*, *23*(1), 273–339.