REGULATING CRYPTOCURRENCIES: THE DILEMMA OF REACHING CONSENSUS

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**Regulating Cryptocurrencies: The Dilemma of Reaching Consensus**
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**Introduction**

In May 2010, Laszlo Hanyecz became the first person to purchase goods with bitcoins, after he managed to exchange 10,000 bitcoins for two boxes of pizza valued at 41 USD; as of June 2020, those pizzas are worth millions with bitcoin’s market capitalization exceeding 170 billion[[1]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn1%22%20%5Co%20%22). This one simple transaction unbridled a whole new era of decentralized “stateless” operations.

In an era where digitalization and digitization have reached every terrain, a traditional form of currency was at no ease from a revolutionary step, and over the years many sought to create a new form of a “currency” or an alternate to the centralized payment system. This is where David Chaum steps in with his paper titled “[Blind Signatures for Untraceable Payments](http://blog.koehntopp.de/uploads/Chaum.BlindSigForPayment.1982.PDF)” published in the 1980s, discussing the concept of a digital, anonymous and untraceable currency[[2]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn2%22%20%5Co%20%22), which later developed into “DigiCash”. Although it was prone to fail[[3]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn3%22%20%5Co%20%22), “DigiCash” paved the way for further developments into the concept of alternate digital transacting methods[[4]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn4%22%20%5Co%20%22). After several failed attempts, amid the 2008 global economic crisis, an anonymous party called Satoshi Nakamoto had seemed to find the solution.

Nakomoto’s whitepaper titled “Bitcoin: A Peer-to-Peer Electronic Cash System,”[[5]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn5%22%20%5Co%20%22) gave rise to an electronic cash system relying purely on a peer-to-peer basis to perform direct operations between two parties[[6]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn6%22%20%5Co%20%22). In the core of this decentralized network lied a distributed ledger later called the “blockchain”, that replaced the need for a central authority to control, monitor and perform transactions. The system utilizes several technologies including digital signatures, proof of work and mining, ultimately providing a solution to the double-spending problem, which abundant electronic payment systems had resolved by resorting to third parties[[7]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn7%22%20%5Co%20%22). The ledger is maintained, and transactions are confirmed by nodes, miners who run these nodes receive specific amounts of newly mined bitcoins as an incentive[[8]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn8%22%20%5Co%20%22). In short, bitcoin is a decentralized pseudonym cryptocurrency that is not issued nor controlled by a central authority, it exists solely in a digital form and has a limit of 21 million[[9]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn9%22%20%5Co%20%22).

These distinct characteristics of bitcoin had led to its popularity and adoption. However, this unregulated cryptocurrency caused new unprecedented challenges to regulators around the world and ambivalence in views and stances. It is due to bad actors[[10]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn10%22%20%5Co%20%22) exploiting the new technology and the anonymity feature, that shifted regulators’ attention towards it and spiked a race of imposing attempted control. Regulators soon realized the novelty of the technology which precedes regulatory updates by years, demanding actions in various fields starting from but not limited to criminal, taxation and civil law.

Soon, and especially after the emergence of “Altcoins”[[11]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn11%22%20%5Co%20%22) and “Initial Coin Offerings”[[12]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn12%22%20%5Co%20%22), regulators were keen on finding approaches to regulate various aspects of this decentralized technology, but there is no ultimate right way of regulation nor consensus on a definite strategy to this day. The lack of consensus emerges primarily in the differences between adopted terminologies, definitions, characterization and continues towards regulatory approaches and policies; it is the absence of universal unity that gave cryptocurrencies an ambiguous legal status.

In this article, we will not be explaining the working of the technology, rather give an overview and an assessment of reality in various regulatory fields in selective jurisdictions including Lebanon. While this article covers cryptocurrencies in general, in some cases bitcoin will be the sole focus. Part I of this article will point out the difference between terminologies and adopted definitions. Part II will shortly discuss the positive and negative outcomes of cryptocurrencies, which in turn contribute to shaping legal aspects. Part III will overview current regulatory approaches adopted by states. Part IV will overview and analyze various regulatory actions in different legal fields. Part V concludes.

**Terminology and Definitions**

It is a vital matter to distinguish between cryptocurrencies and electronic money (e-money)[[13]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn13%22%20%5Co%20%22). The former is not issued nor controlled by a central bank/state and thus is not subject to relative EU directives[[14]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn14%22%20%5Co%20%22) and any other regulations. Hence, laying outside the scope of regulations and operating outside the existing financial system constitute the core of the problem. However, regulators seeking to address the problem, have not even agreed on unified terms and definitions that draw the scope of applicability. Here we overview some examples.

The Financial Action Task Force (FATF) is one of the first and leading parties to discuss cryptocurrencies. In 2018 it replaced the term “virtual currencies” with “virtual assets” and defined it as “a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes. Virtual assets do not include digital representations of fiat currencies, securities and other financial assets that are already covered elsewhere in the FATF Recommendations.”[[15]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn15%22%20%5Co%20%22)

The European Central Bank (ECB) as well approached cryptocurrencies in their early days. After publishing the “Virtual Currency Schemes” in 2012 and 2015, the ECB formed the Crypto-Asset Task Force which adopted a new term “crypto-assets”(eliminating other types of “virtual currencies” from its scope), and defined them as “a new type of asset recorded in digital form and enabled by the use of cryptography that is not and does not represent a financial claim on, or a liability of, any identifiable entity.”[[16]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn16%22%20%5Co%20%22)

More recently, the EU has introduced to the scope of the Fifth Anti-Money Laundering Directive (AMLD5)[[17]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn17%22%20%5Co%20%22) the term “virtual currencies” and defined it in art.1(2)(d)(18) as a ”digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored and traded electronically.”

On a national level, the lack of unity was also depicted. For instance, in the United States, the Securities and Exchange Commission (SEC) has adopted the term “digital asset” defining it as an asset that is issued and transferred using distributed ledger or blockchain technology, including, but not limited to, so-called “virtual currencies,” “coins,” and “tokens”[[18]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn18%22%20%5Co%20%22). In France, the PACTE law[[19]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn19%22%20%5Co%20%22) adopted the term “actifs numériques”(digital assets) and considered them as means of exchange, that can be transferred, stored or exchanged electronically but are not legal tenders[[20]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn20%22%20%5Co%20%22). Although in 2020, the Commercial Court of Nanterre recognized bitcoin as a form of money[[21]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn21%22%20%5Co%20%22). In Lebanon, the Electronic Transactions and Personally Identifiable Data law adopted a vague term “digital and electronic money” and defined it as “electronic cash units that can be saved on an electronic pillar.”[[22]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn22%22%20%5Co%20%22)

**The Jeopardizing Merits of Cryptocurrencies**

Bitcoin is a decentralized digital currency, that eliminates the middlemen such as the banks, and strives to shift their control towards the people[[23]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn23%22%20%5Co%20%22). As a result, transacting parties possess the sole operating power without relying on banks and financial institutions, that tend to monitor financial actions, impose limitations and cause unnecessary impediments.

Not to mention the low cost of transactions and the required little time for confirmation. The blockchain itself is immutable, incorruptible, its visibility and accessibility contribute to achieving information transparency[[24]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn24%22%20%5Co%20%22). In short, cryptocurrencies allow those with no access to banks to a banking experience, that is, banking without banks.

However, with all the fraudulent Initial Coin Offering (ICO) projects circulating over the past several years, cryptocurrencies’ risks have come to the front lines. Keeping in mind the effects of unregulated cryptocurrencies by states on investors and users, who are left without a regulatory shield and any form of legal recourse... Other economic and technical risks emerge as well.

First comes the volatility problem, which either enriched or impoverished stakeholders. Bitcoin’s value for instance is solely and exclusively determined by the law of supply and demand[[25]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn25%22%20%5Co%20%22), which explains its fluctuating value over the years. Moreover, time has proven the correlation between volatility and security breaches of exchanges just like the MT.GOX incident[[26]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn26%22%20%5Co%20%22) or even with Ponzi schemes like Bitconnect[[27]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn27%22%20%5Co%20%22).

On the other hand, although the irreversibility of transactions prevents fraudulent cancellations and promotes transparency, it poses legal problems related to consumer protection and criminal law. For instance, if the private key of a user has been compromised and consequently funds have been transferred without their will (stolen for example), funds cannot be returned without the authorization of the new owner (the hacker). Hence, the loss of the private key is eternal and recovery is not possible. Meaning, in case of death (without prior disclosure) or forgetfulness or theft, the currencies are lost forever and cannot be redeemed.

On an economic and a financial level, some see cryptocurrencies as a threat to the state’s sovereignty especially when they escape the scope of governmental policies[[28]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn28%22%20%5Co%20%22), while others debunk these theories for the meantime[[29]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn29%22%20%5Co%20%22). All in all, bitcoin especially has proved to be an alternative for a store of value or a mean of exchange among the citizens of countries with collapsed economies and limited banking services, one of which is Lebanon. Lebanon in the midst of an economic crisis, immense devaluation of its currency, illegal capital control and coming forth of Lollars[[30]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn30%22%20%5Co%20%22), has found a possible substitute in bitcoin[[31]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn31%22%20%5Co%20%22)... Some Lebanese who have never heard of bitcoin priorly, have embraced it[[32]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn32%22%20%5Co%20%22), which in turn lead to a boom in an unregulated Lebanese market. This is just proof that cryptocurrencies do indeed defeat capital controls[[33]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn33%22%20%5Co%20%22).

**Regulatory Approaches and Strategies**

To this date, there is a lack of consensus when it comes to the way cryptocurrencies should be regulated, and if they need regulation in the first place. With the increase of popularity and adoption of cryptocurrencies, and with some famous cases brought in front of courts such as the Silk Road case[[34]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn34%22%20%5Co%20%22), regulators were prone to and have sought after finding grounds to regulate cryptocurrencies. As a result, and thus far, three regulatory approaches have emerged.

The first being the easiest but not the safest approach is banning and restricting the use, ownership and exchange of cryptocurrencies. Whether a full ban is imposed or a partial one, countries’ main reason lies within the usage of cryptocurrencies by criminals and previously addressed risks. Algeria for example, expressly banned the purchase, sale, possession and use of “virtual currencies” under the provisions of article 117 of the 2018 Algerian Financial Law[[35]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn35%22%20%5Co%20%22). Consequently, a country choosing to prohibit cryptocurrencies should work on finding efficient means to enforce these restrictions, because prohibition by imposing ordinary and classic measures will not be effective; some scholars even have doubts on whether a state’s regulation can effectively restrain the payment system on the blockchain[[36]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn36%22%20%5Co%20%22). Users will always find a way to buy, trade and exchange cryptocurrencies due to their global and decentralized nature, meaning restrictions are easily circumvented and national laws are thus undermined.

The second approach is called the “wait and see”, where a country driven by the hesitancy of uncertainty, tends to monitor and observe the reflection of the actions taken by others. This approach is characterized by either a total silence or by the issuance of warnings.

For instance, in 2013, the Central Bank of Lebanon issued a warning[[37]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn37%22%20%5Co%20%22) to the public regarding cryptocurrencies, turning Lebanon the first country in the Middle East to take a stance. The Bank warned about the risks of “virtual money”, including transactions made through unregulated networks that cannot provide any legal protection nor recourse; the irreversibility of transactions; their highly speculative and volatile nature; and their use for criminal activities. However, in 2018[[38]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn38%22%20%5Co%20%22), a partial ban has been imposed on financial institutions and exchanges. The ban prohibited them once again from issuing “e-money” and also the advertisement and exchange of “electronic currencies”. The latter warnings have sparked a mix up with the terms “e-money” and digital currencies in general and have put Lebanon in the legal grey zone of regulations. Consequently, the Lebanese laws do not prohibit the ownership, use, trade of cryptocurrencies, but when it comes to their acceptance as a payment method, regulations only adopt legal tenders/fiat currencies. Thus, the acceptance of cryptocurrencies by retailers, for example, can be ruled under the provisions of barter.

The third approach is acting and regulating various aspects of cryptocurrencies. But first, what are the outcomes of regulation? Besides being prone to misappropriation for criminal purposes, accompanied by the risks imposed on stakeholders making them in desperate need of regulation to resolve the outcoming problems… With regulation comes trust and more adoption and that allows to reap the benefits of cryptocurrencies to the full, plus some governments see it an opportunity to maneuver for a position in an emerging market full of potential[[39]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn39%22%20%5Co%20%22).

Therefore, risks may be mitigated by either the application of new laws or by the application of existing laws incorporating cryptocurrencies into the current regulatory system. But not all existing regulations can be applied directly; hence current regulations are not equipped to handle the anonymity and decentralization features; law enforcement agencies are bound by current laws and procedures when it comes to taking actions. The incorporation of express amendments eliminates the grey zone and saves up the time needed to write and test new regulations. This has been the most popular action that states are following, from European countries to the European Union, to Canada and the United States.

Contrarily, others have incorporated cryptocurrencies in new regulations such as France’s PACTE law, and Lebanon’s new Electronic Transactions and Personally Identifiable Data Law. The latter identified “electronic and digital money” without any distinction between two polar concepts, cryptocurrencies and e-money. Whilst, article 61 of the law granted the authority of further regulations to the Central Bank of Lebanon, paragraphs 4 and 5 of article 116 have criminalized the acts of forging “digital or electronic money” and their usage with prior knowledge. The latter article remains unclear on the count of two grounds. Firstly, the acts of forging and counterfeiting cryptocurrencies are not technically plausible[[40]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn40%22%20%5Co%20%22) because their system is immutable[[41]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn41%22%20%5Co%20%22), that is the blockchain has impunity. Secondly, the Lebanese criminal code has criminalized those acts only when the subject is a legal tender[[42]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn42%22%20%5Co%20%22) and since cryptocurrencies nor any type of electronic money is regarded a legal tender in Lebanon, it puts the provisions of article 116 at stake.

There is no doubt that all attempts at regulating cryptocurrencies are not prosperous, and the little knowledge of some legislators is hindering the process. However, one cannot deny and ignore the various legal measures in different areas.

**Areas of Regulation with Action**

Cryptocurrencies’ anonymity/pseudonymity features alongside growing acceptance by merchants and multinational companies, raise significant legal issues that might require thorough scrutiny by regulators, especially in the fields of cybercrime, public law/taxation, civil law/consumer protection and overall, in law enforcement.

These currencies have an ecosystem made up of various aspects that make them difficult to regulate. Let us take bitcoin, for instance, the latter is decentralized and a distributed network[[43]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn43%22%20%5Co%20%22) with no central intermediary controlling it, meaning there is no central body regulators can target.

The bitcoin network exists solely on the Internet; thus, it could be accessed from any location in the world. Consequently, the globality of bitcoin makes it relatively futile for countries to single-handedly implement regulations as they will be ineffective unless met with complementary regulations from other countries[[44]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn44%22%20%5Co%20%22). Third, Bitcoin is a revolutionary innovation. Its full potential has not been reached yet, so trying to contain it with inflexible and rigid regulations will only stifle the innovation.

The following section focuses on various regulations that have been enacted on cryptocurrencies in different fields of the law.

**A- Regulations Targeting Central Actors**

The most prominent actions taken towards exchanges and service providers are Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) measures, which aim essentially to the removal of anonymity features.

A cryptocurrency exchange can be defined as a financial-based institution that facilitates the buying and selling of cryptocurrencies. Exchanges offer different services, some facilitate fiat-crypto exchange, some offer crypto-crypto services and others offer both. While wallet service providers are entities that provide wallet services, which store private/public keys[[45]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn45%22%20%5Co%20%22). Although there are the custodian[[46]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn46%22%20%5Co%20%22) and non-custodian service providers, most AML/CFT regulations have only targeted the former.

Exchanges and other businesses play a pivotal role in the ecosystem of cryptocurrencies and can facilitate the circumvention of regulations. Luckily, they can be easily targeted by regulators due to their central nature. As a result, international and national regulatory bodies sought to have control over them in different approaches.

**1- International and Territorial Regulations**

**The European Union**

The Fifth Anti-Money Laundering Directive (AMLD5) aims at preventing the misuse of the financial system for terrorist financing and money laundering. It bears high significance after the introduction of the terms “Virtual Currencies” (VC), “Custodian Wallet providers” (CWP) and virtual currency exchanges[[47]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn47%22%20%5Co%20%22). The provisions of the directive restricted its jurisdiction to VC-fiat exchanges, leaving VC-VC exchanges outside of its scope. In a questionable approach, article 44(29) has obliged the mentioned CWPs and exchanges to register with their local regulators to operate, while leaving others the freedom to apply for a voluntary declaration. In addition, in recital 9 of the directive, the European legislator has admitted that the latter approach would not eliminate and fix the anonymity problem, since users can bypass the framework by transacting without the obliged exchanges and CWPs, not to mention the similar outcome of eliminating non-custodial wallet service providers.

Moreover, entities are now subject to regulatory requirements just as other financial institutions, which means they must perform Know Your Customer (KYC), Customer Due Diligence (CDD), reporting, record keeping and submit suspicious activity reports. The mentioned measures as expected, have induced some confusion in implementation[[48]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn48%22%20%5Co%20%22) and thus formed a burden on exchanges who are now forced to either merge, fold or even find new locations, similar to the Netherlands based crypto exchange “[Deribit](https://www.bloomberg.com/news/articles/2020-01-09/largest-crypto-options-exchange-heads-for-panama-amid-scrutiny)” which was forced to move to Panama to circumvent the harsh regulations[[49]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn49%22%20%5Co%20%22).

Furthermore, the AMLD5, has given the Financial Intelligence Units (FIU) the authority to obtain the addresses and identities of owners in efforts to fight the anonymity of VC transactions[[50]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn50%22%20%5Co%20%22). However, the latter approach violates one of the main objectives of cryptocurrencies, which is transaction privacy.

**The Financial Action Task Force**

The FATF was one of the first intergovernmental organizations to address cryptocurrencies and their need for regulation. Prior to its 40 Recommendations comprising with cryptocurrencies, it had published several reports discussing their risks and misuse[[51]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn51%22%20%5Co%20%22). In October 2018, the FATF adopted two new terms “Virtual Assets” (VA) and “Virtual Asset Service Providers” (VASP) and amended Recommendation 15[[52]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn52%22%20%5Co%20%22). Later in June 2019, in a step to provide further clarification towards the application of its recommendations by VASPs, the FATF adopted an Interpretive Note to Recommendation 15 and published a new guidance[[53]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn53%22%20%5Co%20%22). Consequently, countries are now required to apply a risk-based approach when dealing with VAs activities and VASPs; in addition to subjecting VASPs to supervision/monitoring by specialized national authorities, from which these entities must get a license/register[[54]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn54%22%20%5Co%20%22). On top, countries must seek the full compliance of VASPs with AML/CFT measures[[55]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn55%22%20%5Co%20%22).

Notably, the FATF’s scope of definition to the term “VASP,” unlike the AMLD5 expands to crypto-to-crypto exchanges. This strikes a possible future contradiction to EU countries, who are obliged to amend their national laws in concord with the AMLD5.

Moreover, the application of Recommendation 16 (the Travel Rule) has spiked a controversy. The rule goes against the nature and goal of cryptocurrencies, which aim to provide an anonymous/pseudonym ecosystem. The rule requires VASPs to collect, reveal, transfer and share vital information, such as names and addresses; with the intention to disclose the real identities of the transacting parties. The rule might push users towards non-VASP services and alternatives such as Peer-to-Peer services, causing an increase in their activities, and thus resulting in the strengthening of unregulated services[[56]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn56%22%20%5Co%20%22).

It is worth noting that the United Nation’s Security Council has adopted resolution 2462 (2019)[[57]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn57%22%20%5Co%20%22), which welcomed the FATF’s work and measurements, and encouraged member states to comply.

**2- National Regulations**

Numerous countries broke their silence and strived to regulate cryptocurrencies and businesses providing related services. With that in mind, this paper only examines three audacious and unique regulatory approaches in the section below.

**Canada**

With the Amendments to Canada’s Proceeds of Crime (Money Laundering) and Terrorist Financing Act SOR/2019-240, entering into force as of June the 1st, 2020 “Virtual Currency Exchanges” and “Payment Processors” are thereof officially regulated as Money Service Businesses (MSB)[[58]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn58%22%20%5Co%20%22). These amendments require the mentioned entities to register and comply with FINTRAC (Financial Transactions and Reports Analysis Centre of Canada), the country’s FIU. In addition, these businesses must now comply with full KYC/AML measures including the implementation of a full compliance program and reporting and identifying every transaction exceeding 10,000 Canadian dollars[[59]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn59%22%20%5Co%20%22). These regulations are far-reaching since they apply to even foreign exchanges operating in Canada or have Canadian customers.

**France**

The 2019 French law PACTE[[60]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn60%22%20%5Co%20%22) has introduced the terms “Digital Assets” and “Digital Assets Services Providers”[[61]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn61%22%20%5Co%20%22). It creatively regulates cryptocurrencies and businesses and is considered to have a flexible modus operandi; one that does not constrain innovation. The latter approach is achieved especially by offering the possibility of an optional licensing from the Autorité des Marchés Financiers (AMF), a step reflecting positively on small-medium businesses.

In contrast, in the case of AML/CFT requirements, the law made an exception and only obliged a certain type of service providers to register with the AMF and comply with regulations. The exception targets custodian wallet providers and businesses providing digital asset-fiat exchange[[62]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn62%22%20%5Co%20%22); whilst the AMF is granted the authority of terminating their activity in case of omission of registration[[63]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn63%22%20%5Co%20%22).

**Estonia**

Estonia had long ago implemented AML/KYC regulations on cryptocurrency exchanges and service providers, and with the enactment of the AMLD5, it has imposed stricter rules. The country’s 2017 Money Laundering and Terrorist Financing Act, had already included cryptocurrency entities under its provisions, and consequently obliged businesses that both provide “services of exchanging a virtual currency against a fiat currency” and “a virtual currency wallet service” to acquire a mandatory license/authorization from the country’s FIU[[64]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn64%22%20%5Co%20%22) and comply with AML/CFT requirements.

In short, early regulations embracing cryptocurrencies have led to a boom in the country... Soon, Estonia turned into a popular hub for cryptocurrency businesses due to low set up and operational costs, cooperation from legal authorities, e-residency registration program and many other factors.

**B- Taxing Cryptocurrencies**

Bearing in mind the independency of cryptocurrencies’ transactions from financial intermediaries, it is virtually impossible to perform monitoring or control over their activities[[65]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn65%22%20%5Co%20%22); and although the public nature of the ledgers provides transparency, the anonymity feature has proven to be appealing to tax evaders[[66]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn66%22%20%5Co%20%22).

Cryptocurrency users and trading platforms are potential taxpayers, thus essential issues concerning public law are provoked[[67]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn67%22%20%5Co%20%22). Taxing and licensing[[68]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn68%22%20%5Co%20%22)are two matters most countries have resolved almost entirely in a distinct manner. Notably states first and foremost have categorized cryptocurrencies before regulating them; some recognized them as commodities, others like properties etc. this characterization is the basis of regulation. With that in mind, they adapted and incorporated cryptocurrencies into already existing taxation laws.

In this section, two countries were chosen as an example of public law involvement in the area of cryptocurrencies.

**1- Canada**

The Canada Revenue Agency (CRA) describes cryptocurrencies as “a digital representation of value that is not legal tender”, and treats them as commodities, meaning they are subjected to the Income Tax Act[[69]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn69%22%20%5Co%20%22).

While possessing or holding cryptocurrencies is not subjected to any taxes, the act of using them as a payment method is regarded as a barter transaction[[70]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn70%22%20%5Co%20%22) and is subject to income tax.

The CRA has listed disposition activities which triggers tax reporting obligation. The disposition activities are: 1) selling or gifting cryptocurrencies 2) trading or exchanging, including an exchange from crypto-to-crypto 3) converting cryptocurrencies to legal tenders 4) payment method for acquiring goods and services[[71]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn71%22%20%5Co%20%22).

Consequently, the disposition of cryptocurrencies is either classified and taxed as a capital gain or as a business income, depending on the activity and circumstances. Capital gains resulting from a sale are mostly included in income for the year, but in that case only 50% of the capital gain is subject to tax[[72]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn72%22%20%5Co%20%22). Conversely, 100% of business income is taxable.

**2- Germany**

Back in 2013, Germany became the first country to acknowledge cryptocurrencies as a form of currency, after the Federal Ministry of Finance recognized them as “private money”[[73]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn73%22%20%5Co%20%22). Consequently, the German Federal Financial Supervisory Authority (BaFin) treats VCs as financial instruments[[74]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn74%22%20%5Co%20%22).

In February of 2018, the ministry published by a letter, a binding guidance on value-added-tax (VAT) treatment of VCs[[75]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn75%22%20%5Co%20%22). The guidance which falls compatible with the decision of the European Court of Justice “Hedqvist” case[[76]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn76%22%20%5Co%20%22), stated that transactions comprising of an exchange between VCs and fiat currencies form the taxable supply of other services for consideration, however, are exempt from VAT. Furthermore, the guidance stipulates that VCs are treated with the same manner of traditional methods of payment when used as a means of payment, and thus are not taxable in this case.

Hence, being classified as “private money” has its significance… For example, VCs held particularly for a period of over a year. Meaning, there are no taxes on capital gains no matter the held amount or gains, which in turn is an encouraging step for more users to acquire and hold cryptocurrencies.

**C- Consumer Protection Actions**

Bitcoin can be described as an intangible, transferable private property[[77]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn77%22%20%5Co%20%22) and the transactions conducted on the blockchain, raise questions and risks related to civil law.

Firstly, the transactions on the blockchain are irreversible[[78]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn78%22%20%5Co%20%22)and cannot be cancelled nor altered... Although this feature promotes transparency and fights corruption[[79]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn79%22%20%5Co%20%22), it exposes stakeholders to risks, especially when faced with fraud and theft. As a result, users are responsible for the protection of their bitcoins. Courts will face hardship when uncovering the identity of the new owner, then the globality of bitcoin itself will cause a conflict of laws and principles.

Secondly, the lack of express consumer protection laws is concerning. While most jurisdictions refer to tacit regulations or warnings, the lack of organized forms for legal recourse and consistent regulations amongst services spikes a great risk.

Lastly, ICOs[[80]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn80%22%20%5Co%20%22) perhaps comprise the most controversial aspect of the field; although they bring innovation and have managed to raise billions[[81]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn81%22%20%5Co%20%22), studies have shown that 80 per cent of ICOs are scams[[82]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn82%22%20%5Co%20%22). Fortunately, some legislators were keen on offering protection by adopting preventative and reactive measures.

**1- France**

France has contemplated the implementation of the new PACTE law[[83]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn83%22%20%5Co%20%22) for the issuance and governance of ICOs. The French Financial Markets Authority (AMF) has been granted the authority of issuing an optional “Visa” to ICOs. The fundraisers may apply for an optional Visa from the AMF, in case they are not classified as financial securities, in return of meeting certain requirements[[84]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn84%22%20%5Co%20%22). Conditions include being a legal entity established or registered in France, and publishing a white paper with an imperative to indicate risks and stakes. The AMF also clarified that the acquisition of the Visa does not imply to an endorsement[[85]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn85%22%20%5Co%20%22).

Contrarily, in case the ICO application lacks a certain prerequisite, the latter will neither be restricted nor banned but will face certain limitations in advertisement.

**2- The United States**

Until mid-2017, some ICOs in the United States were raising millions of dollars in no time, whilst others were crashing and failing with no ramifications whatsoever. The tables turned in 2017 when the Securities and Exchange Commission (SEC) has published the “DAO Report” by which it established its jurisdiction over most ICOs[[86]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn86%22%20%5Co%20%22).

Consequently, within the SEC’s jurisdiction, ICO tokens regarded as securities are obliged to register with the SEC, unless they fall under an exemption. Regardless the matter, the SEC continues to warn stakeholders from risks especially related to fraud [[87]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn87%22%20%5Co%20%22)and Ponzi schemes.

Since then, the SEC has taken proactive and retroactive measures, mostly by cracking down fraudulent, unregistered or non-compliant ICO’s. Only recently, it ordered an unregistered ICO startup “BitClave PTE Ltd.” to return over $25 million to investors[[88]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftn88%22%20%5Co%20%22). In spite the SEC’s potent “mouse and cat” approach, there is ambiguity amongst entrepreneurs and businesses... Clarity and comprehension are needed to achieve the stakeholders’ highest interest.

**Conclusion**

Cryptocurrencies are new emerging technologies that revolutionize diverse sectors. With some serious doubts revolving ICOs, Bitcoin has been proving to be a solid decentralized payment system. At first, banning seems easy and appealing, however on the long run, it will cause more damage than good.

Regulators should embrace the technology rather than fight it. The right step for a harmonizing relationship would start with giving space to these innovations to grow, by adopting flexible and neutral regulations that do not curb their diverse uses. Therefore, some have found the answer in adopting regulatory sandboxes. Businesses are being monitored and subjected to tailored and flexible regulations with bundles of facilities, exemptions and incentives.

The wisest solution would be to adopt consistent approaches on a global scale. A unified global approach will not allow the circumvention of national laws by geographical shifts, preventing the misuse of grey zones and loopholes. Smarter regulations comprehend more trust and further adoption.

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[[42]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftnref42%22%20%5Co%20%22)-  See articles 440 to 448 of the Lebanese Criminal Code.

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[[80]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftnref80%22%20%5Co%20%22)-  An Initial Coin Offering (ICO) is a modern way of crowdfunding, where usually a startup with a new product, service or coin offers the sale of new tokens to the public, in return for shares, stakes, services etc. they are often compared to initial public offerings (IPOs).

[[81]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftnref81%22%20%5Co%20%22)-  In 2017 alone, ICOs collected over 5 billion across nearly 800 deals. This is 5x more than what equity financing has accumulated.

      See, CB Insights. “Blockchain Startups Absorbed 5X More Capital Via ICOs Than Equity Financings In 2017.” CB Insights Research, 18 January 2018, shorturl.at/ahjpS.

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[[84]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftnref84%22%20%5Co%20%22)-  article 85, L.552-4.

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[[88]](https://www.lebarmy.gov.lb/en/content/regulating-cryptocurrencies-dilemma-reaching-consensus%22%20%5Cl%20%22_ftnref88%22%20%5Co%20%22)-  SEC. “Unregistered $25.5 Million ICO Issuer to Return Money for Distribution to Investors.” 2020-124, 28 May 2020, https://www.sec.gov/news/press-release/2020-124. Accessed 9 June 2020.

**التنظيم القانوني للعملات التشفيرية: معضلة التوصّل إلى الإجماع**

نجحت العملات الرقمية التشفيرية وأبرزها البيتكوين من اكتساح عالم الاقتصاد والمال والتكنولوجيا، إذ قدّمت بطبيعتها اللامركزية والمتحرّرة من نطاق المصارف المركزية، بديلًا حديثًا للتعاملات المالية. ولكن سرعان ما طرحت عدة إشكاليات في الشق القانوني، خصوصًا وأنها تقع خارج المنظومة التشريعية، وفي وقت استغل الأكثرية ميزاتها لتجنّب القوانين والأنظمة المرعية،  الأمر الذي استدعى  استنفارًا  على المستوى التشريعي والذي يهدف إلى إيجاد حلول تحتوي الآثار غير المسبوقة وغير المتوقعة...

استتبع ذلك اتخاذ سياسات واتباع خطط تنظيمية معينة،  لا سيما  تعديل أو سنّ نصوص في مجالات قانونية مختلفة أبرزها الشق الجزائي، المدني والعام. ولكن افتقرت هذه الإجراءات  للإجماع والتجانس، فراحت كل دولة أو منظمة إقليمية/دولية تتبنّى تعابير وتعاريف متنوعة وتطبّقها بطرقٍ متفاوتة، الأمر الذي أضعف من فاعليّتها وحسن نفاذها وأدى إلى نشوء معضلة تشريعية.

من هنا، سنعرض في الدراسة الراهنة هذا التباين في التشريع الحديث سواء في لبنان أو الخارج، موضحين في البداية علاقة حسنات العملات التشفيرية مع سبل التشريع وسيّئاتها. لننتقل لاحقًا إلى أهم الاستراتيجيات التشريعية المعتمدة مؤخرًا، وآلية احتضان القوانين للعملات التشفيرية، مع تحليل وتقييم مدى فاعليّتها ومناسبتها.

نختم بضرورة التوصل إلى منظومة تشريعية مرنة وموحدة دوليًا، تهدف إلى التوصل لآليةٍ فعالة تُطبّق بموجبها القوانين وتُستبعد وسائل التهّرب منها، مع الحفاظ وعدم تقويد نطاق الإبداع التكنولوجي.