

## On trading with so called exchange tokens

Regulations	<ul style="list-style-type: none"> <li>• Act No. 256/2004 Coll., on Capital Market Undertakings, as amended (the “<b>AoCMU</b>”)</li> <li>• Act No. 253/2008 Coll., on Certain Measures Against Money Laundering and Terrorist Financing, as amended (the “<b>AML Act</b>”)</li> <li>• Act No. 40/2009 Coll., the Criminal Code, as amended</li> <li>• Act No. 240/2013 Coll., on Management Companies and Investment Funds, as amended (the “<b>AMCIF</b>”)</li> <li>• Act No. 277/2013 Coll., on Bureau-de-change Activities, as amended</li> <li>• Act No. 370/2017 Coll., on the Payment System</li> </ul>
Provisions	<ul style="list-style-type: none"> <li>• Article 3 of the AoCMU</li> <li>• Article 2(1)(l) of the AML Act</li> <li>• Article 239(2)(a) of the Criminal Code</li> <li>• Articles 2 to 4 of the AMCIF</li> <li>• Article 2(1) of the Act on Bureau-de-change Activities</li> <li>• Articles 2 to 4 of the Payment System Act</li> </ul>

Question	<b>Does trading or exchange of so called exchange tokens require authorisation<sup>1</sup> by the CNB?</b>
----------	--

Answer	<p>Exchange tokens (sometimes called virtual currencies or cryptocurrencies) are a subset of crypto-assets. Their defining characteristics are that they do not incorporate any rights of the owner in respect to other persons and they only allow transfers within their own and, as the case may be, other distributed ledgers. Examples of such include bitcoin or other similar tokens.</p> <p>A owner of an exchange token is a person who has knowledge of data (a private key) that enables such person to make transfers with units registered in a distributed ledger, or tokens.</p> <p>Exchange tokens are not money in economic or legal sense. Data registered in distributed ledger of each individual crypto-asset does not constitute claims denominated in the currency of a country issued by a central bank of such country, credit institutions or other payment service providers. Exchange tokens therefore represent neither non-cash money nor electronic money pursuant to Article 4(1) of the Payment System Act, nor funds pursuant to Article 2(1)(c) of the Payment System Act.<sup>2</sup></p>
--------	---

### Exchange token related activities for which no authorisation by the CNB is required

The activities for which no authorisation by the CNB is required include:

Buying or selling exchange tokens for own account does not constitute any of the payment services referred to in Article 3(1) of the Payment System Act, nor does it represent a non-cash foreign exchange transaction pursuant to Article 3(2) of the Payment System Act. Making transfers within a distributed ledger which particular exchange token is based on (such as sending a certain number of exchange tokens to another user) or providing an exchange token account (typically as a crypto-exchange or as a custody wallet provider) are not payment services

<sup>1</sup> Authorisation granted by the CNB or registration in a relevant list maintained by the CNB.

<sup>2</sup> Analogously to, for example, Österreichische National Bank (OeNB) in *Sind virtuelle Währungen wie Bitcoin eine Alternative zu klassischen Währungen wie dem Euro?* (see [here](#)), Österreichische Finanzmarktaufsicht (FMA) in *FMA Fokus Virtuelle Währungen* (see [here](#)), Finanzmarktaufsicht Liechtenstein in *Faktenblatt zu virtuellen Währungen* of 16 February 2018 (see [here](#)), Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) in *Virtuelle Währungen/ Virtual Currency (VC)* (see [here](#)), Eidgenössische Finanzmarktaufsicht FINMA in *Faktenblatt: Bitcoins* of 25 June 2014 (see [here](#), also available in English [here](#)), Národná banka Slovenska in *Informácia Národnej banky Slovenska k regulácii podnikania v oblasti kryptomien* of 19 March 2018 (see [here](#)) and Narodowy Bank Polski and Komisja Nadzoru Finansowego in a joint statement of 7 July 2017 (see [here](#)).

pursuant to the Payment System Act.

Buying or selling exchange tokens for Czech crowns or other fiat money does not have the features of a bureau-de-change transaction, which is defined in Article 2(1) of the Act of Bureau-de-change Activities as “*a transaction consisting in exchange of banknotes, coins or cheques denominated in a certain currency for banknotes, coins or cheques denominated in a different currency*”, as the subject of such buying or selling has neither a material form, nor it is “denominated in a certain currency”.

Execution of payments between buyers and sellers solely for the purpose of paying for the purchased exchange tokens in connection with the operation of token exchanges may be subject to the exemption of a limited network pursuant to Article 3(3)(c)(4) of the Payment System Act, which stipulates that “*a payment made using instruments intended solely for the payment of a very limited range of goods or services*” is not a payment service.

Exchanging exchange tokens for goods and services does not require CNB authorisation either.<sup>3</sup>

Exchange tokens have none of the features of an investment instrument set out in Article 3 of the AoCMU, as they do not incorporate any rights. Exchange token trading thus do not require an authorisation issued by the CNB (the CNB cannot even grant such authorisation) and hence it is not subject to supervision by the CNB.<sup>4</sup> For this reason, no information duties to the CNB are required.

### **Exchange token-related activities for which authorisation by the CNB is required**

The activities for which authorisation issued by the CNB is required include:

- trading with exchange token derivatives, as such derivatives have features of an investment instrument and trading with them requires an investment firm licence (in particular Article 4a in conjunction with Articles 3 and 4 of the AoCMU);
- managing the assets of investors (of a fund) which invests in exchange tokens, regardless of whether the fund is offered to the public or only to a limited group of investors (in particular Articles 98 and 15 of the AMCIF);
- transferring funds in connection with the organisation of trades with exchange tokens, for example as part of the operation of token exchange, in cases when a person makes transfers of non-cash money or electronic money and such transfers have the features of the provision of payment services (in particular transfers of funds from accounts of clients of such exchange to payment accounts specified by them).

### **Combinations of activities**

The above information implies that **entities with relevant authorisation issued by the CNB are not allowed to trade with exchange tokens beyond the scope of managing their own assets or beyond the scope of the activities authorised by the CNB as per the previous paragraph, i.e. in a manner requiring different business licence**. A management of own assets must always be conducted within the bounds of the rules for investments applicable to particular types of financial institutions. These rules in some cases preclude the acquisition of specific assets such as crypto-assets.

However, some financial institutions, such as hybrid payment institutions/electronic money institutions and some investment firms, may in addition to the relevant CNB authorisation be able to obtain other business licences. These entities may trade

<sup>3</sup> Such activity would be exchanging pursuant to Article 2184 of Act No. 89/2012 Coll., the Civil Code, as amended.

<sup>4</sup> The ESAs issued a joint warning to consumers on virtual currencies on 12 February 2018 (see [here](#)). This document is available in Czech under the title *Společné varování Evropských dohledových orgánů pro spotřebitele před riziky virtuálních měn* on the CNB website (see [here](#)).

exchange tokens or provide related services as entrepreneurs. **In such cases, however, it is not allowed to suggest that services related to exchange tokens are subject to CNB supervision, as this would be misleading to consumers.** In addition, the other business activities related to exchange tokens should not hinder an effective exercise of supervision of a payment institution/electronic money institution and threaten its financial stability (Article 9(1)(i) of the Payment System Act, or Article 68(1)(i) of the Payment System Act), or hinder the proper provision of investment services and effective exercise of supervision of investment firms (Article 6a of the AoCMU).

### **Prevention of anti-money laundering and counter terrorist financing**

From the perspective of application of measures against legalisation of proceeds from criminal activities and terrorist financing it is important to determine the group of obliged persons. **Pursuant to Article 2(1)(l) of the AML Act, the obliged person shall also be a person providing virtual currency related services.**<sup>5</sup> For the purposes of the AML Act, a virtual currency means an electronically stored unit regardless of whether or not it has an issuer, and which is not a money instrument pursuant to Article 2(1)(c) of the Payment System Act. This definition is fairly broad and covers also crypto-assets other than exchange tokens. Obligated persons referred to in Article 2(1)(l) of the AML Act are not subject to CNB supervision. Supervision in the area of prevention of legalisation of proceeds from criminal activities and terrorist financing is performed by the Financial Analytical Unit. However, hybrid institutions must take into account risks of legalisation of proceeds from criminal activities and terrorist financing that relate to the specific nature of their activities on the financial market, and which are subject to CNB supervision.

Nature of the answer:	This answer expresses the opinion of Czech National Bank staff members. Courts and the Bank Board of the Czech National Bank may be of a different opinion.
Contact person:	Tomáš Olexa, <a href="mailto:tomas.olexa@cnb.cz">tomas.olexa@cnb.cz</a>
Date:	19 November 2018

---

<sup>5</sup> The AML Act uses the term “virtual currencies”, but in the context of this document they mean crypto-assets.