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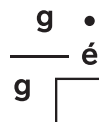
# Rethinking Capitalism

# RED



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# RED

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# Politics, Corporations and Corporate Politics





Aija Lejniece • Independent Counsel

## Crypto Takes Center Stage in Russia's War Against Ukraine

Following Russia's recognition of the self-proclaimed Donetsk and the Luhansk People's Republics, on 24 February 2022, the Russian military launched a brutal invasion of neighboring Ukraine. While Western governments and NATO have been categorically against military intervention against Russia, they were swift to implement draconian sanctions against the Kremlin, as well as Putin and his inner circle, be it Russian banks or oligarchs. Individuals and companies have likewise united in their support for Ukraine - major industry players, including international law firms, have pulled out of the Russian market, while people across the globe have rallied together, donating millions of euros directly to the Ukrainian army and government, as well as to displaced and suffering Ukrainians. Cryptocurrencies have taken an unexpected center stage in the Ukraine war, with Ukraine collecting millions in crypto donations. At the same time, some have questioned whether crypto will provide Russia with an avenue to sidestep the world-wide sanction regime. This article explores crypto's role in the ongoing conflict.<sup>1</sup>

### Crypto as an alternative to fiat

The international community has rallied around Ukraine: in addition to massive businesses like food giants McDonalds<sup>2</sup> and Coca-Cola,<sup>3</sup> Swedish conglomerate IKEA,<sup>4</sup> as well as luxury brand LVMH<sup>5</sup> donating funds and suspending operations in or pulling out of the Russian market altogether, both private individuals and groups have found novel ways of raising funds and donating to

the cause, notably through cryptocurrencies.

A cryptocurrency is a virtual or digital currency secured by cryptography that regulates the generation of units of currency and verifies the execution of payment transactions on a decentralized network.<sup>6</sup> Each unit (or coin) of a cryptocurrency, and all transactions are recorded on a distributed ledger spread across a network of computers or nodes (i.e., a blockchain) linked to that specific cryptocurrency. The system is self-contained, i.e., decentralized, and cryptocurrency payments can be made directly from one party to another, bypassing banks and any centralized interbank settlement.<sup>7</sup> Bitcoin (or BTC) was the first widely adopted cryptocurrency. In the years following Bitcoin's success, other cryptocurrencies have consistently sprung up, reaching over 10,000.<sup>8</sup> Some other widely used cryptocurrencies include Ethereum (ETH), Binance Coin (BNB), Solana (SOL), Tether (USDT), and Dogecoin (DOGE).

Cryptocurrencies are often used as an alternative to sovereign-issued currencies or fiat. Because cryptocurrencies are decentralized,<sup>9</sup> i.e., not issued by a central government authority, they are perceived to be impervious to the politics and actions of national governments, and therefore very attractive to populations in developing markets and countries where national currencies are plagued by hyperinflation or international transactions are limited by the government or foreign currencies are in short supply.<sup>10</sup> One of Bitcoin's early adapters, and currently one of its largest holders, Argentinian entrepreneur Wences Casares, was attracted to the idea of decentralized finance and cryptocurrencies because he had witnessed the financial crisis in Argentina and remembers his mother carrying grocery bags filled with money that she tried to spend as quickly as possible because the peso was in freefall.<sup>11</sup> As will be discussed, in light of the plunging rouble, cryptocurrencies could become increasingly popular in the flailing Russian economy.

### Crypto on the frontline

Ukraine is no stranger to crypto, so it comes as no surprise that it is taking advantage of the crypto space in its time of need. Ukraine is ranked first worldwide in terms

1. The reader should note that this contribution relates to a rapidly developing situation. All information is current as of 2 May 2022.  
2. McDonald's Statement, McDonald's To Temporarily Close Restaurants & Pause Operations in Russia, 8 March 2022.  
3. Coca-Cola Statement, The Coca-Cola Company Suspends its Business in Russia, 8 March 2022.  
4. IKEA press release, IKEA pauses operations in Russia and Belarus, 3 March 2022.  
5. S. Maheswari, 'Luxury giants LVMH and Hermès will close stores in Russia temporarily', *The New York Times*, 4 March 2022.

6. B. Geva, 'Cryptocurrencies and the evolution of Banking' in *Cryptoassets: Legal, Regulatory, and Monetary Perspectives*, C. Brummer (ed) (Oxford) (2019), p. 31.  
7. *Ibid*, pp. 31-32.  
8. CoinMarketCap, *All Currencies*: <<https://coinmarketcap.com/all/views/all/>>.  
9. Note that only cryptocurrencies that are issued, transferred and redeemed over a distributed ledger are said to be decentralized; cryptocurrencies issued and redeemed under a centralized protocol (e.g., cryptocurrencies issued by a central bank), are centralized. This contribution deals with decentralized cryptocurrencies. B. Geva, 'Cryptocurrencies and the evolution of Banking' in *Cryptoassets: Legal, Regulatory, and Monetary Perspectives*, C. Brummer (ed) (Oxford) (2019), p. 31.  
10. J. Wheatley, A. Klasa, 'Cryptocurrencies: Developing Countries Provide Fertile Ground', *Financial Times*, 5 September 2021.  
11. See N. Popper, *Digital Gold: Bitcoin and the Inside Story of the Misfits and Millionaires Trying to Reinvent Money* (Harper) (2015), pp. 153-161.

of cryptocurrency adoption,<sup>12</sup> with over 12.7% of Ukraine's population owning crypto.<sup>13</sup> In August 2019, Ukraine established its Ministry of Digital Transformation, which is in charge of elaborating and implementing State policy in the sector of digitization, open data, national electronic information resources and interoperability, the introduction of electronic services, electronic trust services, e-government, as well as improving the digital skills among Ukraine's population.<sup>14</sup> On 16 March 2022, President Volodymyr Zelensky approved a bill formally legalizing cryptocurrency in Ukraine.<sup>15</sup> After the war started, Ukraine quickly took advantage of crypto's speed and decentralized nature by using it to raise funds. These efforts have taken two main forms: the sale of NFTs and direct cryptocurrency donations.

An NFT or "non-fungible token" is "a unique digital identifier that cannot be copied, substituted, or subdivided, that is recorded in a blockchain, and that is used to certify authenticity and ownership (as of a specific digital asset and specific rights relating to it)".<sup>16</sup> Blockchain technology is used to record, verify and track each NFT. Like cryptocurrencies, NFTs can be sold and traded by their owners. Unlike cryptocurrencies, NFTs are not mutually freely interchangeable, i.e., they are "non-fungible". For example, like fiat currencies, one Bitcoin has the same value as another Bitcoin, one ETH has the same value as another single unit of ETH and so on. Exchanging one NFT for another would be a much more subjective endeavor - think trading Da Vinci's *Mona Lisa* for Van Gogh's *Starry Night* - the objective value of both is not easy to determine, so any exchange would necessarily entail the subjective valuation of the respective holder.

NFT prices are largely driven by demand - initial prices are set by creators or determined at auction. Like artworks, once an NFT has entered the general circulation, it can be sold or traded for whatever parties are willing to pay for it. While NFT prices are habitually expressed and discussed in fiat currencies (mostly US\$), each NFT is purchased with the cryptocurrency that is attached to the specific blockchain the NFT is held on. For example, NFTs held on the Ethereum blockchain can be purchased with ETH, NFTs held on the Solana blockchain can be purchased with SOL and so on. Revenues from NFT sales can be easily transferred to digital wallets, without the need to reconvert it into fiat.

Scores of NFT fund-raising projects have been launched since the beginning of Russia's invasion. For example:

12. Note that Russia is ranked second. See Chainalysis, "Eastern Europe: High Grassroots Adoption, Outsized Darknet Market and Ransomware Activity", 14 September 2022.

13. Triple A, Ukraine: <<https://triple-a.io/crypto-ownership-ukraine/>>.

14. See Regulation on the Ministry of Digital Transformation of Ukraine, approved by the Resolution No. 856 of the Cabinet of Ministers of Ukraine on 18 September 2019; Ukraine Government Press Release, "Government endorses the Regulation on the Ministry of Digital Transformation", 18 September 2019.

15. Law of Ukraine "On Virtual Assets" (No. 3637).

16. Merriam-Webster Dictionary.

world-famous Ukrainian professional heavy-weight boxer Wladimir Klitschko (the brother of the Mayor of Kyiv, Vitali Klitschko) released an NFT collection to raise funds for the Ukrainian Red Cross and UNICEF;<sup>17</sup> existing NFT project, Rebel Society, issued three limited edition NFTs called Good Rebels, with proceeds going to the Ukrainian Army;<sup>18</sup> digital platform Ikonika is releasing 43,287,512 NFTs - one for each citizen of Ukraine - with funds from the initial sale as well as a 10% royalty fee on all subsequent sales going to three Ukrainian charities in perpetuity;<sup>19</sup> famous Russian feminist protest art group Pussy Riot teamed up with various cryptoactors to establish a decentralized autonomous organization (or DAO),<sup>20</sup> selling an NFT of the Ukrainian flag for US\$6.5 million in ETH with proceeds going to the Ukrainian "Come Back Alive" charity.<sup>21</sup> The Government of Ukraine is also using NFTs to raise funds and document the war through its NFT project 'Meta History Museum of War', with each NFT featuring a tweet regarding a significant moment in the war and an illustration by Ukrainian artists.<sup>22</sup>

NFT sales represent a small portion of crypto-related donations to Ukraine - the bulk of funds have been raised through direct cryptocurrency donations. Soon after the invasion, the Ukrainian Government published the addresses of the State's official crypto wallets via Twitter and subsequently an official government website.<sup>23</sup> Ukraine is accepting donations in all major cryptocurrencies, including BTC, ETH, UST, DOGE, and SOL, and anyone can transfer cryptocurrency or NFTs to a publicly known wallet address. The Government of Ukraine is likewise collaborating with Ukrainian-based Web3 company Everstake and public blockchain platform Solana (whose native cryptocurrency is SOL), setting up DAO to raise funds.<sup>24</sup> Crypto donations have also been made in NFTs - an anonymous NFT collector transferred CryptoPunk #5364, valued at

17. Klitschko is partnering with the artist WhisBe by creating four limited editions of WhisBe's existing NFT collection "Vandal Gummy," with price points of US\$100, US\$1,000, US\$10,000 and US\$1 million. E. Tan, "Ukrainian Boxer Wladimir Klitschko Releases NFT Collection to Support Relief Effort", *CoinDesk*, 8 March 2022.

18. RebelSocietyNFT Twitter, 26 February 2022: <<https://twitter.com/RebelSocietyNFT/status/1497521176012152833>>; Good Rebels collection on Opensea: <<https://opensea.io/collection/good-rebels>>.

19. K. Barcella, "Ukrainian Relief Efforts Within the Crypto & NFT Communities", *JDSupra*, 8 March 2022; N. Buckler, "Ukraine NFTs: The Gift That Keeps Giving Each Time it is Sold", *BeInCrypto*, 1 March 2022.

20. A DAO is a code-based entity collectively owned and managed by its members, with no central leadership. DAOs are transparent and autonomous, with smart contracts laying down foundational rules, as well as automatically executing the community's decisions.

21. UkraineDAO website: <<https://www.ukrainedaio.love/>>.

22. Meta History Museum of War website: <<https://metahistory.gallery/>>; S. Escalante-De Mattei, "Ukraine Has Launched an NFT 'Museum' to Preserve the Country's History", *ARTnews*, 28 March 2022.

23. Ukraine Government Twitter, 26 February 2022: <<https://twitter.com/Ukraine/status/1497594592438497282?s=20&t=2w5qqZC2imd5j56hbG3b-vA>>; Vice Prime Minister of Ukraine and Minister of Digital Transformation of Ukraine Twitter, 2 March 2022: <<https://twitter.com/FedorovMykhailo/status/1498982855162175488>>; Ministry of Digital Transformation of Ukraine website: <<https://donate.thedigital.gov.ua/>>.

24. The initiative is called "Aid for Ukraine." See Aid for Ukraine website: <<https://nation.io/dao/ukraine>>.

around US\$200,000, to Ukraine's ETH wallet.<sup>25</sup>

According to Alex Borynyakov, Ukraine's deputy minister at the Ministry of Digital Transformation, Ukraine's crypto wallets have received close to US\$100 million in donations.<sup>26</sup> The Economist reports that by the beginning of March, Ukraine had already spent over half of its crypto donations on military equipment and medical aid, with about a fifth of the funds raised spent in crypto directly.<sup>27</sup>

### Crypto's interaction with international sanctions

International economic sanctions have been described as "half-way between diplomatic protest and military action."<sup>28</sup> Deterred by the fear of escalating the conflict further, the international community has chosen financial pressure over military intervention, slamming Russia with unprecedented sanctions. To date, the EU has adopted five sanctions packages<sup>29</sup> via Council decisions and regulations amending the previous sanctions adopted in response to Russia's annexation of Crimea.<sup>30</sup> These include:<sup>31</sup>

(i) Sanctions on over 800 individuals and over 60 entities linked to the Kremlin, including asset freezes;

(ii) An import ban that includes coal, iron and steel products, and new investments in the Russian energy sector;<sup>32</sup>

(iii) An export ban that includes luxury goods, maritime navigation goods and radio communication technology, oil refining technology, and technological goods;<sup>33</sup>

(iv) A ban on transactions with the Russian Central Bank;

(v) The exclusion of key Russian banks from the SWIFT system;

(vi) The prohibition of the provision of euro-denominated banknotes to Russia;

(vii) The ban on broadcasting certain Kremlin-backed media propaganda;

25. CryptoPunks is one of the most popular and highly-valued NFT projects to date and consists of 10,000 uniquely generated NFTs that have previously been sold at Christie's. See CryptoPunks collection on OpenSea: <<https://opensea.io/collection/cryptopunks>>; D. Nelson, "CryptoPunk NFT Is Latest Donation to Ukraine's \$33M Campaign", *CoinDesk*, 2 March 2022.

26. See Ministry of Digital Transformation of Ukraine website: <<https://donate.thedigital.gov.ua/>>; A. Singh, Ukraine Has Received Close to \$100M in Crypto Donations, *CoinDesk*, 9 March 2022.

27. The Economist, "How is Ukraine using crypto to fund the war?", 5 April 2022: <<https://www.economist.com/the-economist-explains/2022/04/05/how-is-ukraine-using-crypto-to-fund-the-war>>.

28. M. Azeredo Da Silveira, 'Chapter 7: Economic Sanctions, Force Majeure and Hardship' in F. Bortolotti and D. Udemé Ufot (eds), "Hardship and Force Majeure in International Commercial Contracts: Dealing with Unforeseen Events in a Changing World", Dossiers of the ICC Institute of World Business Law, Vol. 17 (Kluwer Law International; International Chamber of Commerce (ICC)) (2018), p. 161.

29. Note that the EU has likewise adopted multiple sanctions against Belarus.

30. Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine; Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine.

31. For a summary of all EU sanctions against Russia, see European Commission website: <[https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/restrictive-measures-sanctions\\_en#russia](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/restrictive-measures-sanctions_en#russia)>.

32. Note that the ban is not absolute and has carve-outs.

33. Note that the ban is not absolute and has carve-outs.

(viii) Closing of the EU airspace to Russian air carriers.

The US, the United Kingdom, Switzerland, Canada and Japan have likewise imposed sanctions targeting Russian companies and individuals, and enacting banking restrictions.<sup>34</sup> Because of the sanctions and market pressure, payment services such as Visa,<sup>35</sup> Mastercard,<sup>36</sup> American Express,<sup>37</sup> as well as PayPal<sup>38</sup> and Apple Pay<sup>39</sup> have exited or severely limited operations in Russia, leaving Russian citizens cut off from the international financial market. The sanctions have also caused the Russian ruble to plummet, hitting an all-time low on 2 March 2022.<sup>40</sup>

Some have questioned whether crypto could enable the Russia to sidestep sanctions. Notably, Senator Elizabeth Warren, along with three other Democratic senators, sent a letter to the US State Treasury,<sup>41</sup> asking what steps it was taking to preclude crypto-related evasion of US economic sanctions. According to the senators, "digital assets, which allow entities to bypass the traditional financial system, may increasingly be used as a tool for sanctions evasion".<sup>42</sup> The letter specifically cites a confidential 2022 UN Report, according to which North Korea used stolen cryptocurrency funds for its nuclear and ballistic missile program,<sup>43</sup> as well as reports that Iran has turned to Bitcoin mining to buoy its cash-strapped economy and lessen the impact of international sanctions.<sup>44</sup> According to Senator Warren "cryptocurrencies risk undermining sanctions against Russia, allowing Putin and his cronies to avoid

34. For a summary of all US sanctions against Russia, see US Department of Treasury website: <<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions>>. For a summary of other international sanctions, see E. Nolsoe, V. Pop, "Russia sanctions list: What the west imposed over the Ukraine invasion", *Financial Times*, 4 March 2022.

35. Visa Statement, Visa Suspends All Russia Operations, 5 March 2022: <<https://usa.visa.com/about-visa/newsroom/press-releases.releaseid.18871.html>>.

36. Mastercard Statement, Mastercard statement on suspension of Russian operations, 5 March 2022: <<https://www.mastercard.com/news/press/2022/march/mastercard-statement-on-suspension-of-russian-operations>>.

37. American Express Statement, American Express Suspends Operations in Russia and Belarus, 6 March 2022: <<https://about.americanexpress.com/all-news/news-details/2022/american-express-suspends-operations-in-russia-and-belarus/default.aspx>>.

38. P. Dave, "PayPal shuts down its services in Russia citing Ukraine aggression", *Reuters*, 5 March 2022: <<https://www.reuters.com/business/paypal-shuts-down-its-services-russia-citing-ukraine-aggression-2022-03-05/>>.

39. B. Fung, "Apple suspends all product sales in Russia", *CNN Business*, 1 March 2022.

40. Reuters, "Ruble hits record low in Moscow, remains volatile outside Russia", 2 March 2022.

41. Letter from Democratic Senators to US State Treasury, 2 March 2022: <<https://www.warren.senate.gov/imo/media/doc/2022.03.01%20Letter%20to%20Treasury%20re%20OFAC%20crypto%20sanctions%20enforcement.pdf>> ("Senator Warren Letter").

42. *Ibid*, p. 2.

43. *Ibid*; BBC News, "North Korea: Missile programme funded through stolen crypto, UN report says", 6 February 2022: <<https://www.bbc.com/news/world-asia-60281129>>; P. Falk, "North Korea uses cyberattack earnings to advance nuclear and missile development, U.N. panel reports", *CBS News*, 7 February 2022: <<https://www.cbsnews.com/news/north-korea-cyberattacks-nuclear-missile-program-united-nations-report/>>. See also UNSC doc. S/2019/691, 30 August 2019.

44. Senator Warren Letter; 2021 Elliptic Guide to Sanctions Compliance in Cryptocurrencies: <<https://info.elliptic.co/coming-soon-sanctions-compliance-in-cryptocurrencies>>; A. Irrera, "Iran uses crypto mining to lessen impact of sanctions, study finds", *Reuters*, 21 May 2021.



economic pain.<sup>45</sup> According to reports, Senator Warren is working on a bill that would mandate US-based cryptocurrency exchanges to identify transactions from Russian wallet addresses that may evade US sanctions.<sup>46</sup> Ukraine's Deputy Prime Minister and Minister of Digital Transformation, Mykhailo Fedorov, has likewise called on crypto exchanges to block Russian users since the invasion began.<sup>47</sup>

While sanctions target foreign governments, they apply to entities and individuals under the jurisdictions of the issuing States or organizations. EU sanctions apply to all EU nationals, be it private citizens or entities incorporated or constituted in EU Member States, as well as persons located in the EU or doing business here.<sup>48</sup> Similarly, US sanctions apply to US nationals, permanent residents, entities formed under US law, as well non-US persons located in the US, doing business in the US or with a sufficient nexus to the US. Accordingly, crypto companies registered or operating in sanctioning jurisdictions, as well as nationals using crypto, fall under the purview of the sanctions.

The EU has explicitly confirmed that its sanctions include crypto - Regulation 2022/394 amending Regulation 833/2014 on the previous Crimea sanctions states that while "it is commonly understood that loans and credits can be provided by any means, including cryptoassets, given their specific nature it is appropriate to further specify the notion of "transferable securities" in relation to such assets."<sup>49</sup> Accordingly, the definition of "transferable securities" now also includes "crypto-assets."<sup>50</sup> The EU's fifth sanctions package went a step further by directly imposing a EUR10,000 limit on digital wallets held by Russian persons or entities.<sup>51</sup>

45. Senator Elizabeth Warren Twitter, 28 February 2022: <<https://twitter.com/senwarren/status/1498376453280391178?lang=bg>>.

46. L.A. Caldwell, "Warren crafts bill targeting cryptocurrency in Russia sanctions", *NBC News*, 8 March 2022: <[https://www.nbcnews.com/politics/congress/warren-crafts-bill-targeting-cryptocurrency-russia-sanctions-rcna19094?cid=sm\\_np\\_d\\_nn\\_tw\\_ma](https://www.nbcnews.com/politics/congress/warren-crafts-bill-targeting-cryptocurrency-russia-sanctions-rcna19094?cid=sm_np_d_nn_tw_ma)>.

47. Mykhailo Fedorov Twitter, 27 February 2022: <<https://twitter.com/FedorovMykhailo/status/1497922588491792386>>.

48. See e.g., Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, Article 17, and Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, Article 13: "This Regulation shall apply: (a) within the territory of the Union; (b) on board any aircraft or any vessel under the jurisdiction of a Member State; (c) to any person inside or outside the territory of the Union who is a national of a Member State; (d) to any legal person, entity or body, inside or outside the territory of the Union, which is incorporated or constituted under the law of a Member State; (e) to any legal person, entity or body in respect of any business done in whole or in part within the Union."

49. Council Regulation (EU) 2022/394 of 9 March 2022 amending Council Regulation (EU) No 833/2014 of 31 July 2014, Recital 4.

50. Council Regulation (EU) 2022/394 of 9 March 2022 amending Council Regulation (EU) No 833/2014 of 31 July 2014, Article 1(1)(f).

51. Council Regulation (EU) 2022/576 of 8 April 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, Article 31. Article 5b(1) of Council Regulation (EU) No 833/2014 now reads: "It shall be prohibited to provide crypto-asset wallet, account or custody services to Russian nationals or natural persons residing in Russia, or legal persons, entities or bodies established in Russia, if the total value of crypto-assets of the natural or legal person, entity or body per wallet, account or custody provider exceeds EUR 10 000."

The US, along with the other G7 countries<sup>52</sup> addressed the group's commitment to closing sanctions loopholes and combating evasion, and confirmed that the "current sanctions already cover crypto-assets," further stating that the group will be "taking measures to better detect and interdict any illicit activity, and [...] impose costs on illicit Russian actors using digital assets to enhance and transfer their wealth, consistent with our national processes."<sup>53</sup> In addition, the US Office of Foreign Assets Control (OFAC), which administers and enforces US economic and trade sanctions, has stated that sanctions apply "regardless of whether a transaction is denominated in traditional fiat currency or virtual currency."<sup>54</sup> The US has also chosen to directly target Russian crypto mining industry by putting one of Russia's major miners, BitRiver and its subsidiaries on the US sanctions list, stating that the US "is committed to ensuring that no asset, no matter how complex, becomes a mechanism for the Putin regime to offset the impact of sanctions."<sup>55</sup>

The UK financial regulatory authorities issued a statement on sanctions and the cryptoasset sector, reiterating that "all UK financial services firms, including the cryptoasset sector, are expected to play their part in ensuring that sanctions are complied with."<sup>56</sup> Japan's Ministry of Finance has also confirmed that its sanctions apply to digital currencies.<sup>57</sup>

### All about implementation

The real crux of the matter is implementation of the international economic sanctions in the crypto-space. At the end of 2021, OFAC issued its "Sanctions Compliance Guidance for the Virtual Currency Industry."<sup>58</sup> In this document, OFAC sets out best practices for sanctions compliance and specifies that all cryptocurrency actors, including "technology companies, exchangers, administrators, miners, wallet providers, and users, play an increasingly critical role in preventing sanctioned persons from exploiting virtual currencies to evade sanctions and undermine US foreign policy and national security interests" and are "responsible for ensuring that they do not engage, directly or indirectly, in transactions prohibited by OFAC sanctions."<sup>59</sup>

52. United Kingdom, Canada, France, Germany, Italy, Japan, and the EU.

53. Joint Statement by the G7 Announcing Further Economic Costs on Russia, 11 March 2022: <<https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/11/joint-statement-by-the-g7-announcing-further-economic-costs-on-russia/>>.

54. US Department of the Treasury website, FAQ 1021: <<https://home.treasury.gov/policy-issues/financial-sanctions/faqs/1021>>.

55. US Department of the Treasury website, Press release, 20 April 2022: <<https://home.treasury.gov/news/press-releases/jy0731>>.

56. Joint statement from UK financial regulatory authorities on sanctions and the cryptoasset sector, 11 March 2021: <<https://www.fca.org.uk/news/statements/uk-financial-regulatory-authorities-sanctions-cryptoasset-sector>>.

57. Statement to cryptocurrency exchange companies from the Ministry of Finance of Japan, 14 March 2022: <<https://www.fsa.go.jp/news/r3/sonota/20220314/20220314-1.pdf>>.

58. OFAC, "Sanctions Compliance Guidance for the Virtual Currency Industry", October 2021, available at: [https://home.treasury.gov/system/files/126/virtual\\_currency\\_guidance\\_brochure.pdf](https://home.treasury.gov/system/files/126/virtual_currency_guidance_brochure.pdf).

59. *Ibid*, p. 1.

Sanctions compliance obligations apply equally to transactions involving virtual currencies as they do to traditional fiat transactions.<sup>60</sup> The OFAC identifies five key components of best practices for crypto actors' compliance with sanctions: commitment of the management, risk assessment, internal controls, testing and auditing and training, and encourages companies in the cryptocurrency industry to "develop, implement, and routinely update, a tailored, risk-based sanctions compliance program."<sup>61</sup> The UK financial regulatory authorities' joint statement, as well as the statement of Japan's Ministry of Finance likewise lists similar best practices for sanctions compliance for crypto companies.

While the genesis of cryptocurrencies such as Bitcoin may have been tainted with infamy because of its use for nefarious causes,<sup>62</sup> that is no longer the case. Cryptocurrencies may be decentralized, i.e., created, transferred and stored outside the purview of the government, but crypto transactions are public and fully traceable on the blockchain.<sup>63</sup> For example, the US Department of Justice and the British police have successfully traced and seized large amounts of Bitcoin stolen or used for criminal means.<sup>64</sup> Just like fiat currency, cryptocurrency can be used for illegal purposes, including to sidestep sanctions. Crypto's infamy of yore has more to do with law enforcement being a step behind in understanding the technology well enough to catch criminals.

Most crypto companies, whether trading platforms or wallet providers, have KYC and AML protocols, as well as precise geolocation and transaction monitoring tools. Sanctions will only apply to crypto companies incorporated or operating in sanctioning jurisdictions, and compliance will depend on the efficiency of each individual company's internal procedures. Provided that crypto companies and actors have enacted and comply with internal procedures and monitor cryptocurrency transactions, and the relevant authorities of sanctioning States efficiently implement legislation, Russia should not be able to sidestep international sanctions by taking advantage of the crypto market.

Crypto's real anti-sanction utility may be found with ordinary Russian citizens who have been cut off from certain services due to the international sanctions against Russia. To take a mundane example: Instagram is no lon-

ger available to Russian IP addresses; this problem may be sidestepped via a VPN connection that would relocate the user's actual IP address to one outside of Russia; even though Russian credit cards or other payment methods may no longer work to pay for foreign services, a VPN subscription may be purchased via cryptocurrency. Accordingly, payments to and from non-sanctioned Russian citizens and entities, which would have been impossible due to current banking restrictions and commercial service withdrawals, may still be possible via cryptocurrency.

One way of ensuring that Russia's population is completely cut off from the crypto market would be for the international community to enact sanctions explicitly requiring cryptocurrency exchanges and wallet providers to ban Russian users altogether. The EU's fifth sanctions package has already affected Russian Binance users, whose account activity has been limited to withdrawals as soon as the EUR 10,000 limit is reached.<sup>65</sup> Undeniably, sanctions go squarely against the crypto community's libertarian ideals and decentralized nature. Several crypto companies have confirmed that they will comply with any applicable sanctions by blocking accounts and transactions of sanctioned individuals or entities, but a general ban on Russian parties has been widely rejected.<sup>66</sup> In the words of the world's biggest crypto trading platform, a blanket ban on Russians "would fly in the face of the reason why crypto exists."<sup>67</sup> Only South Korean crypto exchanges have voluntarily chosen to block Russian IP addresses.<sup>68</sup>

### Concluding remarks

Economic sanctions are coercive, symbolic and punitive. From a legal perspective, the current sanctions regime should not allow Russia or Kremlin's cronies to escape the wrath of the international community by resorting to crypto. Compliance and implementation will depend on the efficiency and discipline of crypto actors, and the vigilance of law enforcement. The crypto community's aversion to centralized regulation and government interference should be a powerful motivator for the crypto sector to take a proactive role in tracking suspected wallets and transactions - fewer sanctions violations equal less of a chance that States will impose a blanket ban on Russian users in general.

In any event, the recent events in Ukraine have made clear that waging war in the 21<sup>st</sup> century means not only advanced nuclear weapons but also new financial instruments to reckon with.

60. *Ibid.*

61. *Ibid.*, pp. 10-23.

62. e.g., Silk Road, the world's first darknet market, whose users paid for narcotics, falsified documents and even contract killings in Bitcoin. For a history of Bitcoin, see N. Popper, *Digital Gold: Bitcoin and the Inside Story of the Misfits and Millionaires Trying to Reinvent Money* (Harper) (2015).

63. There are a numerous cryptocurrencies such as Monero (XMR) and ZCash (ZEC) that add a layer of anonymity making the currencies virtually untraceable, however the majority of widely popular currencies are traceable.

64. See, e.g., US Department of Justice Press Release, Department of Justice Seizes \$2.3 Million in Cryptocurrency Paid to the Ransomware Extortionists Darkside, 7 June 2021; US Department of Justice Press Release, United States Files A Civil Action To Forfeit Cryptocurrency Valued At Over One Billion U.S. Dollars, 5 November 2020: <<https://www.justice.gov/usao-ndca/pr/united-states-files-civil-action-forfeit-cryptocurrency-valued-over-one-billion-us>>; R. Hart, "British Police Seize \$250 Million Of Cryptocurrency In International Money Laundering Crackdown", *Forbes*, 13 July 2021.

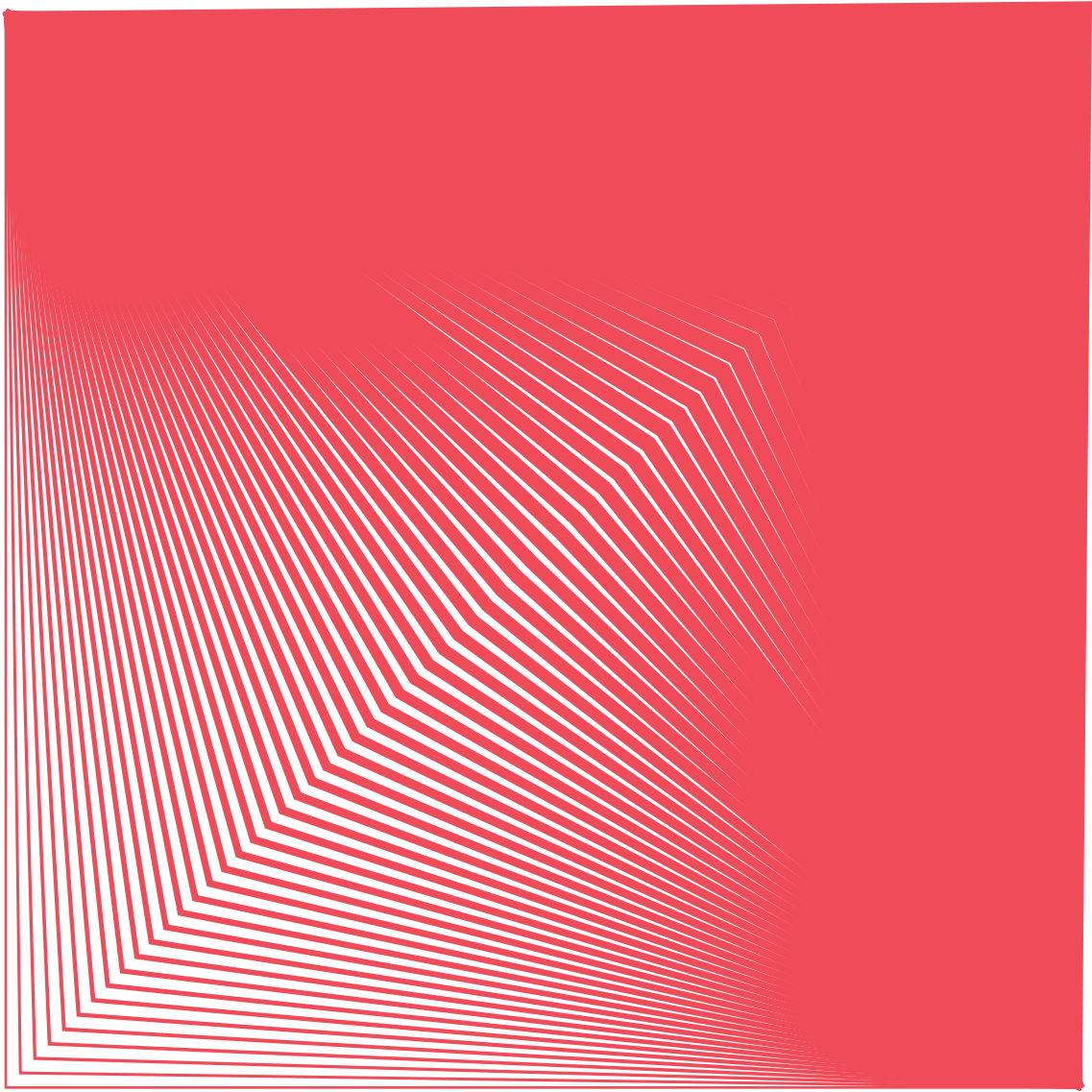
65. Binance, Announcement: Changes to Services to Users in Russia, 21 April 2022: <<https://www.binance.com/en/support/announcement/4887e569afdf4b1e89e024371d3a49b9>>.

66. C. Morris, "Crypto exchanges choose 'financial freedom' and refuse to block Russian users", *Fortune*, 28 February 2022; J. Partridge, "Crypto exchange boss resists calls for ban on all Russia transactions", *The Guardian*, 2 March 2022.

67. A. Kharpal, "World's biggest crypto exchange Binance says it will not block all Russian accounts despite Ukraine request", *CNBC*, 28 February 2022.

68. A. Chaturvedi, "South Korean crypto exchanges move to ban Russian users", *Business Today*, 7 March 2022.





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