DYNARIAN (Legal Letter Opinion)

English Version / March de 2021

DYNARIAN is a free open source project derived from Bitcoin, aiming to provide a long-term energy efficient, scrypt-based cryptocurrency. Built on the foundation of Bitcoin, PPCoin, and NovaCoin, innovations like proof-of-stake and scrypt will help further advance the field of cryptocurrencies.

OPINION ON THE LEGAL NATURE OF THE DYNARIAN CRYPTOCURRENCY (DYN) AS SECURITIES

March 2021

1. PRESENTATION

The following is an opinion on the legal classification of the cryptocurrency DYNARIAN (DYN) according to the legal framework of the European Union.

The consultation took place at the GABINO & ASOCIADOS law firm, in favor of the DYNARIAN project.

The question to be answered is: "What is the legal classification of cryptocurrencies according to European Union (EU) law?"

To answer this question, we analyzed the DYNARIAN cryptocurrency and its characteristics. Next, we explain the concept of cryptocurrency, its legal ramifications, and regulatory implications. Finally, we draw the profile of the DYNARIAN cryptocurrency, identifying its legal framework. The choice of the aforementioned jurisdiction is justified by the operational base of the association in Spain.

The Opinion's conclusions consider ...

- the March 2021 White Paper revision

- the analysis of related documents, in particular those of the DYNARIAN WEBSITE (www.dynarian.com)

- Analysis of the laws and positions of the public authorities relevant to the issue.

For all purposes, the mention of the cryptocurrency DYNARIAN (DYN) in this opinion, as well as the morphological variations and combinations of these expressions, will refer to the version of the cryptocurrency described in the white paper, dated March 2021. Consequently, it should be noted that this opinion refers - exclusively - to cryptocurrency according to the legal and technological model described in the White Paper. Any alteration, modification, development, reduction, etc. Subsequent content is outside the scope of this Opinion and, therefore, is not necessarily consistent with the reasoning and conclusion set forth herein.

Furthermore, for the purposes of this opinion, a cryptoasset will be conceptualized as any digital asset developed using cryptographic techniques and distributed ledger technology (DLT).

2. INTRODUCTION TO THE DYNARIAN PROJECT

The DYNARIAN project consists of offering a cryptoactive that it proposes through technology and usability to facilitate investment in cryptocurrencies and empower this community in the search to take advantage of the opportunities available in this segment. The features are exchange strategy, wallet and synchronization, among others.

As for the crypto asset, specifically, it is possible to observe some incentives to use it. In this sense, we have:

- Stake Bonus (Proof of Stake, PoS)

- bonus for work (Proof of work, PoW)

- contribution bonus

Taking into account the object of this opinion, only the characteristics of the DYNARIAN cryptocurrency will be observed on its official WEB page, where it acquires relevance, but separately from it. That is to say: only the nature of the cryptoactive will be studied, and any functionality offered by the WEB www.dynarian.com or another service is outside the scope of this opinion. Therefore, it will be evaluated if its characteristics are constitutive of values for the European Union, as already commented.

The white paper briefly addresses explaining to the user the mechanisms of operation of the network.

The caput of this paragraph foresees the way in which the network works from the entry of a new transaction to the generation of a block within the chain. It also foresees an incentive program (PoW) and the acceptance of said blocks among participating and decentralized nodes is mentioned.

The other temptation program is called "Participation Bonus". Any amount entered into a Wallet will become proof of stake, at a rate not shown in this document.

Finally, the development of tools such as a POS and others by third parties that want to collaborate with the project giving more usability is foreseen, which will be created to stimulate the accumulation of the cryptoactive, according to the interest of DYNARIAN.

WHITE PAPER DYNARIAN (DYN) MARCH 2021

As already explained, the analysis of this opinion will be based on the qualities of the DYNARIAN cryptocurrency which, in the White Paper, are described in the ANNEX.

In short, 21 million DYNARIAN (DYN) are expected to be issued under the technical standard of the Scrypt algorithm. And a special issue of 1 million DYNARIAN (DYN) for Airdrop. This amount will be divided between the community and team (community mannager, team support (10%), community (90%).

As an advantage for those who contribute to the development of the project, this contribution is paid in DYNARIAN (DYN) and said contributions will only be eligible for these DYNs as long as the community agrees.

3. LEGAL CLASSIFICATION OF CRYPTO ASSETS IN THE EU

The study on the legal nature of cryptoactive products in the European Union begins with the consultation of the treatment given by the regulatory authorities of the European capital market to said cryptoactive products. This is because the starting point for the discussion on the legal qualification of crypto assets mainly involves issues between Initial Coin Offerings (ICO) and possible violations of the regulatory laws of the financial system.

Therefore, this opinion has as its starting point the study of the legal system of the European financial market and the performance of its regulatory bodies, the main actors in the categorization of crypto assets. It should be noted that the European financial market is regulated at the community level by the European Union. As a result, the related EU normative acts are of fundamental importance for the legal analysis of this opinion.

First of all, it is indicated that, in accordance with art. 288 of the Treaty on the Functioning of the European Union, for the exercise of the powers of the EU, the community institutions adopt the following normative acts: regulations, directives, decisions, recommendations and opinions. These instruments represent secondary law, the main one being the treaties and general principles adopted at Community level.

EU regulations are general in nature and binding in their entirety and directly applicable in all Member States. The Directives, in turn, bind Member States only as regards the result to be achieved, that is, the way and the means to achieve such results. However, they are freely established by national authorities.

Since 1999, the EU has been regulating the European capital market, establishing a series of directives and regulations to control various aspects of this market, such as the creation of prospectus rules, transparency rules, etc. Currently, the European Commission aims to integrate all the bloc's markets, further perfecting the EU27's system of free movement of capital.

Currently, the European Security Market Authority (ESMA) is the EU entity responsible for supervising the capital market at Community level. ESMA describes itself as “an independent Community authority that contributes to safeguarding the stability of the EU financial system, improving investor protection and promoting the stability of financial markets” 28.

ESMA is part of the European System of Financial Supervision (ESFS), which is made up of three supervisory authorities: the European Securities and Markets Authority (ESMA), the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority. (EIOPA).

The system also includes the European Systemic Risk Board (ESRB), as well as the Joint Committee of European Supervisory Authorities and national supervisory authorities.

ESMA's missions include conducting a risk assessment for investors, the market and overall financial stability. Based on the risk analysis function, ESMA has the power to closely monitor the benefits and risks of financial innovations in the European market.

Building on this competition, ESMA recently carried out an in-depth study of the cryptocurrency market. The goal was to understand the types of crypto stocks, rank them, and then assess the degree of risk that crypto stocks from the closest financial sector offer to the European capital market. In addition, ESMA also assessed the dangers posed by unregulated crypto assets to investors and submitted proposals for regulation of the sector.

Finally, in January 2019, ESMA publishes its opinion to the Institutions of the European Union (EU) - Commission, Council and Parliament - on initial offerings of coins and cryptocurrencies. Among other aspects, the opinion ostensibly deals with the legal qualification of crypto assets, from the perspective of the legal system of capital markets (financial securities law).

However, it should be noted that ESMA was not the only European financial supervisory authority interested in studying cryptoeconomics. The EBA also issued an opinion in the same period (January 2019), addressing the crypto market from the perspective of the Second Directive on Electronic Currency (Directive 2009/110 / EC) and the Second Directive on Payment Services (Directive 2015 / 2366 / EU). 31.

The positions of ESMA and EBA will be analyzed in detail and aligned with community legislation and specialized doctrine, in order to better define the dominant criteria for the legal qualification of cryptocurrencies in the EU, so that a final judgment can be made about the DYNARIAN cryptocurrency.

ESMA POSITION

Hundreds of crypto assets have been issued since Bitcoin was launched in 2009. However, although they share the same technological base, the blockchain, the diversity of characteristics and functions that these crypto assets have occupied in the most diverse sectors of the economy, it is quite vast.

Due to their diversity, while some crypto companies may be within the scope of the EU Financial Regulation, others may be outside that scope. Therefore, the need arises for the distinction and organization of classes of crypto assets, whose system must be based on legal parameters. This was ESMA's position in its report.

Despite the need for the legal qualification of cryptocurrencies for the correct legal-regulatory treatment of the different market segments that have been developed through blockchain technology, there is currently no legal concept of crypto for financial markets legislation. at the community level.

Despite the lack of a specific concept, ESMA understands that the best way to pursue the legal qualification of crypto assets is by analyzing these digital assets considering the legal concept of financial instruments provided in the Markets in Financial Instruments Directive (MiFID). II.

According to art. 4 (1) (15) of MiFiD II, “Financial Instrument” is “any of the instruments specified in Annex I, Section C”. Consequently, said regulation recognizes as financial instruments, ultimately, transferable securities, money market instruments, participations in collective investment agreements and derivatives.

In turn, the values, according to art. 4 (1) (44) of MiFiD II, are:

The categories of securities negotiable in the capital market, except means of payment, such as:

- Company shares and other securities equivalent to shares of companies, companies or other entities, as well as dividend deposit certificates

- bonds or other forms of securitized debt, including certificates of deposit for such securities

- any other securities gave the right to the purchase or sale of said securities or gave rise to a cash settlement determined by reference to securities, currencies, interest or yield, raw materials or other indices or indicators.

Therefore, if the cryptography complies with the concept of "security" or any other concept of financial asset, it must conform to the regulatory system of the European financial market.

However, ESMA has made it clear that the useful classification of cryptocurrencies as a financial instrument is the responsibility of each of the National Authorities and will depend on the specific state application of EU legislation.

As a result, ESMA sought to consult Member States, presenting them with a series of real crypto assets with varying characteristics (profit, investment and profit-investment and payment-investment hybrids) to know the behavior of national legislation with respect to the challenge of framing. legal of these digital assets.

The result of the consultation made it clear that the competent national authorities of the Member States, in the course of transposing MiFID into their federal legislation, defined the legal term "financial instrument" differently. While some use a restrictive list of examples to describe values, others use broader interpretations. This type of attitude opens the door to legal uncertainty at the European level, since there is a lack of uniformity in the regulatory treatment of crypto assets offered in Europe.

However, what is most striking in the ESMA investigation is the fact that the only cryptoasset treated uniformly was prequalified as a pure utility. On this point, ESMA added the following:

The fact that no NCA has labeled the case as a transferable security and / or financial instrument suggests that pure utility-type crypto assets may be left out of existing financial regulation in the Member States. The rights they transmit appear to be too far removed from the financial and monetary structure of a security interest and / or a financial instrument.

Therefore, despite the lack of European consensus on the legal definition of tokens that include investment aspects, those purely utility-type cryptos are unanimously considered as outside the scope of financial sector legislation.

It remains to be identified what is the previous classification of the cryptoasset adopted by the ESMA and what is the specific concept given to the useful cryptoasset. The answer is the following:

Crypto assets can have different characteristics and / or fulfill different functions. Some crypto assets, sometimes referred to as 'investment type' crypto assets, may have some earning rights attached, such as shares, shares as instruments, or instruments other than equity. Others, so-called “utility-type” crypto-assets, provide some “utility” or consumption rights, for example, the ability to use them to access or purchase some of the services / products that the ecosystem in which they are built targets. offer. Others, so-called "payment type" crypto assets, have no tangible value, except for the expectation that they can serve as a means of exchange or payment to pay for goods or services that are external to the ecosystem in which they are built. Furthermore, many they have hybrid characteristics or they can evolve.

As such, ESMA considered that the type of utility is crypto that provides some "utility" or consumption rights, for example, the ability to use them to access or buy some of the services / products that the ecosystem in which they are built has. the offer target. On the other hand, investment-type cryptocurrencies will be those associated with rights of participation in profits or rights related to the performance of the security or participation in a company. Finally, the type of payment is the type of crypto that has no tangible value, such as Bitcoin, which serves only as a means of payment.

These ideal types of cryptoactive agents can be merged into mixed-character cryptoactive agents as defined by the ESMA. Mixed crypto assets tend to be classified as securities or other financial assets as long as they have an investment character, even if they are combined with another utility or payment function.

Thus, despite the gray regulatory area that reaches the crypto assets offered in Europe, it can be considered that there is a well-drawn line in terms of utility tokens and payment tokens. First, no EU member state has been able to frame the utility token as a security or financial asset, thus recognizing its non-regulation. On the other hand, payment-type crypto assets were not even considered in the investigation, given their apparent incompatibility with the concepts developed by the financial market regulatory system.

It is understood that the report presented by ESMA, although not conclusive on several points, offers sufficient tools for the legal qualification of the DYNARIAN (DYN) cryptocurrency considering European legislation, given that DYNARIAN has token utility functionality.

Therefore, an appreciation of DYNARIAN functions will primarily score if the token has unique "utility" characteristics. This is because the ESMA Opinion, as well as much of the specialized doctrine, recognizes that the applicability of EU securities regulation should focus on crypto securities that are characterized as an investment, as a promise to participate. in the cash flow generated by the project. The mere possibility of value appreciation should not be enough to match the tokens with securities, nor the small possibility of trading on a secondary market.

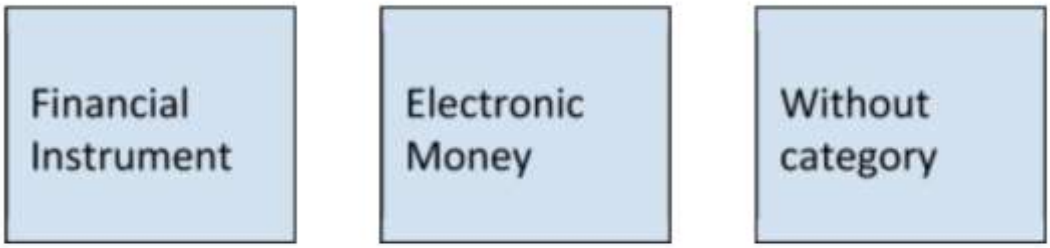
EBA POSITION

The EBA observations outlined in the January 2019 report are related to the applicability and suitability of AMLD2, CRD43 / CRR44, EMD245, and PSD246 for crypto assets and activities involving crypto assets.

However, for this analysis, the EBA report will be explored only in relation to the application of legislation that may determine the legal nature of any crypto. For this reason, attention will be paid to EMD2 and PSD2, Directives that grant crypto legal qualifications under the traditional payment system of the European Community.

According to the EBA Report, crypto securities are not Biblical banknotes or money. Therefore, they do not fit the definition of "funds" established in article 4 (25) of PSD2 unless they qualify as "electronic money" for EMD248.

Therefore, according to the EBA, the legal qualification of crypto assets under the regulatory system of the European Union can now be represented by the following diagram:



This rating diagram can be applied to all currently recognized crypto classes, i.e. payment / exchange / currency tokens, investment tokens, and utility tokens, as the EBA itself has well defined.

Once the discussion on cryptocurrencies as a financial instrument is over, the criteria for framing these assets must be evaluated against the legal concept of “electronic money” envisaged in EU legislation.

Cryptocurrencies are classified as electronic money as defined in article 2 (2) EMD2 if and only if they satisfy each of the elements of the definition of the concept. Let's see:

“Electronic money” means electronically, magnetically included, the stored monetary value represented by a credit on the issuer that is issued when receiving funds in order to carry out payment transactions as defined in point 5 of article 4 of the [PSD2], and that it is accepted by a natural or legal person other than the issuer of electronic money.

Based on this definition, the EBA came to understand that cryptocurrencies will be considered electronic money for art. 2 (1) of the EMD2 if the following characteristics are found:

- have monetary value

- be stored electronically

- Represent a claim on the issuer

- Issued upon receipt of funds

- Be issued to carry out payment transactions

- Be accepted by people other than the issuer.

The position of the EBA is that even payment-type cryptocurrencies will be considered electronic money for EMD2 purposes only if all criteria are cumulatively met.

The report notes that the term is used to refer to "virtual currencies" (virtual currencies or cryptocurrencies). The EBA's conceptual payment tokens are as follows: tokens that "generally do not grant rights but are used as a medium of exchange (for example, to allow the purchase or sale of a good supplied by someone other than the issuer of the token) , for investment purposes or for the storage of value. Examples include Bitcoin and Litecoin. "

According to the Report, they are tokens that generally grant rights (for example, some form of property rights and / or dividend-like rights). It has a complete application in the context of raising capital through ICOs (Initial Coin Offering).

According to the EBA, public service tokens generally allow access to specific products or services, usually provided from a DLT platform, but are not accepted as a payment method for other products or services. For example, in the context of cloud services, a token can be issued to facilitate access.

3.1 SUBSUNTION

Having presented the regulatory parameters used by the EU for the legal qualification of crypto assets, it is possible to make the subsumption judgment of the DYNARIAN (DYN) cryptocurrency based on these parameters.

Taking into account the data provided by the Consultant, it is observed that DYNARIAN (DYN) is not a simple payment token, since it incorporates certain rights / functionality for exclusive use in the community. Based on what has been found, DYNARIAN will function as an access token for unique services and products within the network and as a payment token within the community.

Taking into account these rights and characteristics of DYNARIAN, it is highlighted that it is presented as a network marketing vehicle since it is created as a tool to encourage the use and loyalty of the community. At the same time, the token can also circulate through other exchanges.

Therefore, DYTNARIAN (DYN) does not qualify as a “value” and cannot be compared with any other type of financial instrument listed in art. 4 (1) (15) of MiFiD II.

Although these crypto assets are presented as a standardized class of digital assets that meet the standardization and transferability criteria required by MiFiD II (art. 4 (1) (44)), crypto assets cannot be traded on the capital market, they do not have characteristics investment. Furthermore, the asset examined does not have characteristics comparable to the list of examples presented in art. 4 (1) (44) of MiFiD II, such as stocks or debt securities.

The concept of “capital market” is not defined by MiFiD II, but it is understood by the Financial Authorities in the broadest possible way, that is, as any space organized to facilitate the transfer of resources from surplus economic agents to agents. economic deficit.

This broad definition of the capital market is associated with the role that this market sector plays in the economy. The International Organization of Securities Commissions

Only by understanding the role of the capital market in the economy can the scope of the legislation regulating the sector be delimited in an efficient and rational way. Any legal interpretation that serves the purpose of expanding the regulatory power of the state beyond the protective objectives of the law itself violates the fundamental rights and freedoms of citizens.

Understanding this point, it is observed that the EU capital market legislation does not lend itself to regulating the market, but only to a small portion of the financial market and, therefore, it does not lend itself to protecting the consumer in general, but rather only to investors.

For these reasons, DYNARIAN (DYN) is not characterized as a "security" or "financial instrument" as defined by Community law. According to the information found, the token does not represent any type of investment, debt securities, promises any profitability, nor does it grant its holder any right to participate in companies. DYNARIAN (DYN) can be classified as a simple token utility and is therefore outside the regulatory scope of EU financial market legislation.

DYNARIQN (DYN) is also not set up as "electronic money" for EMD2 purposes. This is because it is not issued upon receipt of funds, nor is it considered a tool for the electronic storage of monetary value. It is emphasized that the electronic storage of monetary value does not mean a simple economic appreciation of the token. To think otherwise would be to attribute to any digital good that has economic value the character of electronic money. The term "electronically stored monetary value" means that the digital data represents a monetary unit of value as if it were a fiat currency.

As a result, the fact that DYNARIAN (DYN) has economic value is not sufficient to qualify it as an "electronic currency" under EU Community law.

In fact, and based on the analysis of the Community legislative landscape to date, it appears that DYNARIAN (DYN) does not fall within the scope of current EU legislation on financial services. Consequently, the activities involving these crypto assets are not subject to a standard regulatory scheme in the EU.

4. LEGAL CLASSIFICATION IN SPAIN OF CRYPTOCURRENCIES

The Ministry of Finance uses special guidelines for cryptocurrencies. He has defined cryptocurrencies as (one of the most demanding challenges today), since they represent a novelty in the tax world. Operations carried out with non-traditional currencies constitute financial operations, as long as those currencies have been accepted as a means of payment by all parties to a transaction. Therefore, any income or expense derived from the sale of cryptocurrencies must be included in the income statement in the same way as if it were other investments, since they are considered to be a gain or loss of equity. The result of this activity will be included in the compensation of capital gains or losses. We must bear in mind that operations with virtual currencies are exempt from VAT for both the buyer and the seller, since they are means of payment, and not goods or services. The gains derived from investing in cryptocurrencies must be declared to the Tax Agency, incorporating them into the capital gains of the savings tax base. To do this, the difference between the purchase and sale prices of cryptocurrencies must be included in the equity section, as is the case with shares of listed companies and other types of financial products.

5. CONCLUSIONS

This opinion has dealt with the regulatory issue of cryptocurrencies in the jurisdiction of the European Union. As shown, DYNARIAN (DYN) is not listed as an investment and therefore cannot be classified as a security.

The positions of the European Union regarding crypto assets were analyzed. Without ignoring concepts such as "security" or "financial instrument", there is no community regulation that prevents its free distribution (Airdrop). However, it is noteworthy that the member countries of the European Union, on the contrary, may have more advanced regulation. Since this opinion was not intended to qualify DYNARIAN (DYN) in light of the national laws of all EU Member States, this conclusion is not a final judgment for all sovereignties of the European Community, which may create criteria and specific regulations for the treatment of crypto assets.

In this way, it is oppressed by the non-existence of a rule that conditions the offer of DYNARIAN (DYN) due to its status as a cryptocurrency within the legal universe analyzed.

That's the opinion, in 13 pages, barring better judgment.

Spain, March 2021.

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