

Why Bitcoin Acceptance is a Headache for German Businesses – published in *gtnews*

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While much of the world is being caught up in bitcoin fever, in some regions complicated regulations are making it difficult to build a business case for using virtual currencies. One such place is Germany, where businesses have to obtain a virtual currency licence to do virtually anything with them.

Although the price of bitcoin has fallen drastically over the last few months, interest in this cryptocurrency remains high; an increasing number of merchants are announcing that they accept virtual currencies. New startups are emerging, including automated teller machine (ATM) operators, trading platforms and mining pools. Exchanges are announcing that they will add additional currencies to their exchange capabilities.

Human interest stories detail how users can now buy “everything” from airline tickets to college tuition via bitcoin. Some parents have apparently decided to pay their children’s pocket money in bitcoin, so that the youngsters get used to the digital age. In other words, the gullible reader could be under the impression that legal currency is out, and bitcoin is in. Mass adoption of bitcoin is not only inevitable, but just around the corner. After all, we have entered the digital age.

However, is that true - and if so, is it true everywhere? A closer look at the legal and regulatory status of virtual currencies and bitcoin specifically puts this assumption in doubt.

First, it is useful to remember that unlike the euro (EUR), US dollar (USD) or pound sterling (GBP), bitcoin and other virtual currencies are not legal tender. Therefore, there is no legal obligation to accept bitcoin. In other words, whether a merchant accepts bitcoin or not is at his discretion and thus a question under private law. Herein lies one of the limitations for mass adoption of bitcoin. Consumers might be willing to pay via bitcoin, but if it is not accepted by a seller of goods and services as a payment method, there’s nothing that can be done about it but revert to legal tender.

Second, there’s the question of whether virtual currencies are permitted in a particular country. Permission starts with addressing the question: “What exactly is a virtual currency?”

Jurisdictions around the world have struggled to come up with a workable definition, even after extensive monitoring, review and analysis of the emergence and development of bitcoin. In Europe, the European Central Bank (ECB) made the first attempt to define a virtual currency. In its [October 2012 report](#), the ECB stated that virtual currencies “resembled” money and had their own retail payments systems.

Next, the European Banking Authority (EBA) warned in its [December 2013 report](#) that actual, legal and tax risks existed in the acquisition, holding and trading of cryptographic currencies such as bitcoin. The EBA pointed out the specific risks to consumers, namely that they could lose their bitcoins on untrustworthy trading platforms. For example, when the operator acts without the necessary official licence and/or commits criminal acts (such as money laundering) and then must cease his business operation at a moment’s notice, consumers could be out a lot of money. However, the EBA report was an opinion - not an explicit legal conclusion.

Germany: What is Permitted?

In contrast to some earlier attempts to clarify the nature of the new beast bitcoin, BaFin (the German Financial Services Authority) published a [very clear legal position](#) in December 2013. In BaFin's view, bitcoins are based on the idea of a non-government substitute currency with a limited money supply. As such, BaFin does not consider virtual currencies to be money, e-money, legal tender, or foreign banknotes and coins. After all, there is no central bank issuing virtual currencies. Instead, BaFin classifies bitcoins as "units of account" (Rechnungseinheiten) within the meaning of the German Banking Act (Kreditwesengesetz), i.e., units of value not denominated for legal tender.

BaFin makes it clear that using bitcoin merely as a substitute currency - to make purchases or pay a bill - does not require a licence. The merchant can therefore accept bitcoin without problems, because by doing so it does not provide a banking transaction or financial service.

Things become complicated, however, if the merchant makes use of a payment provider for the payment process that forwards the bitcoins received from the customer to the merchant or initially exchanges them and then distributes the corresponding euro amount to the merchant. In other words, if purchasing or selling of bitcoins for others is provided on a commercial scale, a licence under the German Banking Act (Kreditwesengesetz) is required.

BaFin stipulates that commercial trading of bitcoin is regulated. In particular, there are four regulated activities under the German Banking Act (Kreditwesengesetz) which must be considered. In every individual case, the business model must be examined in order to determine the applicable regulation.

1. **Principal Broking Services** (Finanzkommissionsgeschäfte): Anyone who purchases and sells bitcoin commercially in his own name for the account of others conducts principal broking services and has to obtain a licence from BaFin.
2. **Multilateral Trading Systems** (MTFs): According to BaFin, bitcoin trading platforms can fall under this definition and therefore need a BaFin licence as a financial services institution.
3. **Investment and Contract Broking** (Anlage- und Abschlussvermittlung): BaFin considers that the sole publication of lists of bitcoin traders - whether online or offline - constitutes investment and contract broking that requires a licence under the Banking Act (Kreditwesengesetz) or under the German Trade, Commerce and Industry Regulation Act (Gewerbeordnung).
4. **Proprietary Trading** (Eigenhandel): Providing purchase and sale of bitcoin as a service for others is defined as proprietary trading and therefore a financial service. According to BaFin, especially bitcoin exchange offices meet these requirements.

So, you want to offer bitcoins or found a virtual currency startup in Germany?

Think twice. You can hold bitcoins for your personal use, and accept them directly in payment for goods and services. But without a licence from BaFin, you cannot trade bitcoins, provide others with a bitcoin account or transfer bitcoins for others. In other words, if you want to be in the virtual currency business, you need a licence.

Oh, and did I mention that your business will be subject to tax?