

# E-commerce in Ukraine

## Електронна комерція в Україні

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### Key words:

*e-commerce, concept of e-commerce, importance of e-commerce, features of e-commerce, legal support for e-commerce, legal regulation of e-commerce.*

### Ключові слова:

*електронна комерція, поняття електронної комерції, значення електронної комерції, ознаки електронної комерції, правове забезпечення електронної комерції, правове регулювання електронної комерції.*

The Law of Ukraine "On Electronic Commerce" 03.09.2015 № 675-VIII<sup>1</sup> defines the organizational and legal framework of activities in the field of electronic commerce in Ukraine, determines the procedure for performing electronic transactions using information and telecommunication systems and defines the rights and obligations of the participants of such relations in the sphere of electronic commerce.

Legal support (along with the organizational and technical ones, etc.) of e-commerce market development is recognized as one of the priority tasks in Ukraine due to the rapid development of processes of society informatization, which entailed the emergence of new social relations in the field of management covered by the notion "electronic commerce". The defining characteristic of these relationships is that the participants are endowed with the mutual rights, duties, have their own needs and interests, which are implemented using the information system of public access – the Internet<sup>2</sup>.

The entrance of electronic commerce into economic life, which has already become an objective and obvious reality, requires a comprehensive solution of the problems of its legal support. The presence of a specific object represented by public relations for the exchange of material and non-material assets using the global information networks of general access (Internet) demonstrates the need for an adequate impact on the behaviour of participants of such relations, i.e. their legal settlement. In the regulation of e-commerce from the legal perspective, the selection mechanism for the regulation of electronic commerce activities presents a significant problem, since, for instance, the qualification of the trade via the Internet as a "trade according the sample" or "distant selling" will affect the list of goods that can be sold via the Internet to a business entity, as well as will influence the choice of legal mechanisms by which the implementation of related activities can be organized. The basis of participants' behaviour in electronic commerce can be legally prescribed the non-mandatory model of behaviour as well as the imperative model of interaction of business entities with public authorities, responsible for control (supervision) over the activities of economic entities and their management. Therefore, e-commerce, being a prospective object of legal regulation, requires the identification of relevant concepts, the disclosure of their essence, identification of their characteristics, peculiarities of legal regulation.

Various aspects of e-commerce have already been elucidated earlier in the works of economists and lawyers, including: T.M. Tardaskina, Ye.M. Strelchuk and Yu.V. Tereshko<sup>3</sup>, A.V. Chuchkovska<sup>4</sup>, I.O. Trubin<sup>5</sup>, V.M. Zhe-

<sup>1</sup> Про електронну комерцію : Закон України від 3 вересня 2015 р. № 675-VIII [Electronic resource]. – Access mode : <http://zakon2.rada.gov.ua/laws/show/675-19>.

<sup>2</sup> Трубін І.О. Правове регулювання електронної комерції в Україні / І.О. Трубін // Науковий вісник Національної академії державної податкової служби України. – 2007. – № 2. – С. 192–198.

<sup>3</sup> Тардаскіна Т.М. Електронна комерція / Т.М. Тардаскіна, Є.М. Стрельчук, Ю.В. Терешко. – О. : ОНАЗ ім. О.С. Попова, 2011. – 244 с.

<sup>4</sup> Чучковська А.В. Правове регулювання господарських договорів, що вчиняються через мережі електрозв'язку : автореф. дис. ... канд. юрид наук : спец. 12.00.04 «Господарське право, господарсько-процесуальне право» / А.В. Чучковська. – К., 2004. – 20 с.

<sup>5</sup> Трубін І.О. Правове регулювання електронної комерції в Україні / І.О. Трубін // Науковий вісник Національної академії державної податкової служби України. – 2007. – № 2. – С. 192–198.

likhovsky<sup>6</sup>, Yu.O. Borysova<sup>7</sup>, M.M. Dutov<sup>8</sup>, K.S. Shahbazian<sup>9</sup>, O.S. Vasylenko<sup>10</sup>, V.V. Rieznikova<sup>11</sup>, etc. However, the problem of effective legal security of e-commerce has not been fully resolved in domestic studies yet. In this regard, the problem requires further research, especially legal-economical one owing to the nature (commercial) of the relevant activities. The recently adopted Law of Ukraine "On Electronic Commerce"<sup>12</sup>, being insufficiently employed in the field of management practice, requires a detailed analysis and the elaboration of proposals for its improvement taking into account the international experience and European integration processes.

Despite the fact that the advantages in the economic relation (in particular: global access to global markets; the availability of information about goods and services being sold in real time; the ability to reduce costs; the decrease in the number of media needed to store data; the decrease in the time of product introduction to the market and the process of business entity adaptation to changes in the market; the absence of customs duties related to electronic sales; the increase of competitiveness, etc.), offered by e-commerce cannot be overestimated, yet low scientific determination of related problems and the lack of effective legal regulation are a major deterrent to the development of e-commerce in Ukraine.

The aim of this publication is to study existing approaches to the definition and understanding of the essence of e-commerce, analysis of international experience, as well as determination of prospects of effective legal security of electronic commerce in Ukraine, directions of improvement of its legal regulation.

The *e-commerce* is usually understood as the usage of computer networks to facilitate transactions, including manufacturing, distribution, sale and delivery of goods and services in the market (Complex comparative legal research of the conformity of Ukraine *acquis communautaire* in the field of electronic commerce (e-commerce)<sup>13</sup>). The Law of Ukraine "On Electronic Commerce"<sup>14</sup> defines *e-commerce* as a relationship aimed at making a profit that occur during transactions for the acquisition, change or termination of civil rights and duties committed remotely using information and telecommunications systems, in which the parties of such relationships have the rights and obligations of material character. At the same time, the understanding of the term e-commerce by the Commission of the United Nations (hereinafter UN) on international trade law (UNCITRAL) is much broader and encompasses all types of commercial activities carried out through the exchange of "the information created, sent, received and stored by electronic, optical or similar means including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telefax".

The approaches of scientists to the definition of "electronic commerce" differ. Thus, V.M. Zhelikhovsky<sup>15</sup> offers the definition of *electronic commerce* as a system of relations in the field of implementing data exchange (electronic documents) and information between business entities using the global network of the Internet. A.K. Zharova, V.M. Yelin and V.M. Demianets<sup>16</sup> believe that *e-business (commercial) activities* should be understood as a set of processes aimed at the redistribution of goods, work and services which are formed in the process of implementing business activities by business entities as well as processes aimed at ensuring such

<sup>6</sup> Желіховський В.М. Правові засади електронної комерції в Україні : дис. ... канд. юрид. наук : спец. 12.00.07 / В.М. Желіховський. – К., 2008. – 218 с.

<sup>7</sup> Борисова Ю.О. Цивільно-правове регулювання відносин у сфері електронної комерції : автореф. дис. ... канд. юрид. наук : спец. 12.00.03 «Цивільне право і цивільний процес; сімейне право; міжнародне приватне право» / Ю.О. Борисова. – К., 2012. – 19 с.

<sup>8</sup> Дутов М.М. Правове забезпечення розвитку електронної комерції : автореф. дис. ... канд. юрид. наук : спец. 12.00.04 «Господарське право, господарсько-процесуальне право» / М.М. Дутов. – Донецьк, 2003. – 17 с.

<sup>9</sup> Шахбазян К.С. Міжнародно-правові основи регулювання відносин в мережі Інтернет : автореф. дис. ... канд. юрид. наук : спец. 12.00.11 «Міжнародне право» / К.С. Шахбазян. – К., 2009. – 19 с.

<sup>10</sup> Василенко О.С. Розвиток наукової думки в сфері уніфікації правил електронної комерції в рамках ЮНСІТРАЛ / О.С. Василенко // Порівняльно-аналітичне право. – 2013. – № 3-2. – С. 106–108.

<sup>11</sup> Рєзнікова В.В. Поняття, значення та перспективи правового забезпечення електронної комерції в Україні / В.В. Рєзнікова // Теорія і практика інтелектуальної власності. – 2015. – № 2. – С. 58–72.

<sup>12</sup> Про електронну комерцію : Закон України від 3 вересня 2015 р. № 675-VIII [Electronic resource]. – Access mode : <http://zakon2.rada.gov.ua/laws/show/675-19>.

<sup>13</sup> Комплексне порівняльно-правове дослідження відповідності законодавства України *acquis communautaire* у сфері електронної торгівлі (e-commerce) [Electronic resource]. – Access mode : <http://www.minjust.gov.ua>.

<sup>14</sup> Про електронну комерцію : Закон України від 3 вересня 2015 р. № 675-VIII [Electronic resource]. – Access mode : <http://zakon2.rada.gov.ua/laws/show/675-19>.

<sup>15</sup> Желіховський В.М. Правові засади електронної комерції в Україні : дис. ... канд. юрид. наук : спец. 12.00.07 / В.М. Желіховський. – К., 2008. – 218 с.

<sup>16</sup> Жарова А.К. Предпринимательская деятельность в сети Интернет / А.К. Жарова, В.М. Елин, М.В. Демьянец. – М. : ЮРКОМПАНИ, 2014. – 440 с.

redistribution on the Internet. According to A.V. Chuckovska<sup>17</sup>, *electronic commerce* is a system of interrelated legal relations in the sphere of transactions by exchanging electronic documents which is implemented through the use of telecommunication networks, in particular the Internet. According to Yu.O. Borisova's<sup>18</sup> definition, e-commerce should be understood as the totality of actions of individuals and legal entities implemented for conducting "electronic" transactions (concluding agreements), actions aimed at receiving material benefit. The author argues that the concept "electronic commerce" is wider than its narrow understanding as entrepreneurship. T.M. Tardaskina, Yu.V. Tereshko and Ye.M. Strelchuk<sup>19</sup> note that *electronic commerce* is a form of e-commerce activity using information communication technologies. According to A.A. Maevska<sup>20</sup>, *e-commerce* is a broad set of interactive methods of conducting activities designed to provide consumers with goods and services.

Generally, there exist two prevailing approaches to the definition of "electronic commerce" and the understanding of its essence: 1) as to entrepreneurial (commercial) activities that are a kind of economic activity; 2) as special legal relations – relations of electronic commerce. The latter are interpreted mainly as a complex phenomenon, which needs to be regulated by the norms of various branches of law (commercial, civil, administrative, etc.). The object of legal relations in the field of e-commerce is often digital goods and digital services (data category, although they do not have a tangible expression in the usual sense, but are clearly separated from each other: *digital services* are often traditional services, provided through electronic means; *digital product* is information (often in the form of a file) that is created and transmitted using the same electronic means of communication) exists in the electronic form and can be recorded on a tangible medium).

Despite the fact that the legislative regulation of relations in the field of e-commerce has already found its embodiment in the Law of Ukraine "On Electronic Commerce", a number of provisions to this law require substantial improvement, elaboration, as well as their systemic harmonization with other effective acts of economic, financial, tax, customs and other legislations. Similarly, other legislations need to be brought in line with the requirements of the Law of Ukraine "On Electronic Commerce". And, undoubtedly, the existing international experience of effective legal support of electronic commerce should be taken into account.

It is necessary to distinguish between several levels of legal regulation of electronic commerce: international, regional (in the framework of the European Union (EU) and national. Let us consider major international bodies and the key acts on issues of legal support of electronic commerce adopted by them.

First of all, we should consider *the UN Commission on International Trade Law (UNCITRAL)*. The main acts of the named authority include:

- 1) the UNCITRAL model law "On Electronic Commerce" issued in 1996 (with additional article 5 bis as adopted in 1998)<sup>21</sup>. It had been prepared during 1985–1996, and its aim is to harmonize national legislations in accordance with the requirements which arise in connection with the development of telecommunication technologies. It has a framework, advisory nature and is intended primarily for countries as the basis for the development of national legislation. The law consists of two parts – electronic commerce in general and electronic commerce in the transportation of goods, where the basic features of electronic contract are defined. These features include: readability; permanence; the possibility to make copies; the possibility to authenticate by electronic signature; easy storage. This international treaty has laid the legal framework in the field of electronic commerce, has given the definition for the basic concepts (electronic document, electronic document flow, electronic signature, author of the electronic document, information system), recognized the legal and probative value of documents in electronic form; identified requirements for electronic signatures as a means of the authentication and integrity of an electronic document. The resolution of the UN General Assembly 30.01.1997 A/RES/51/162 recommends "that all States give favourable consideration to the Model Law when they enact or revise their laws, in view of the need for uniformity of the law applicable to alternatives to paper-based methods of communication

<sup>17</sup> Чучковська А.В. Правове регулювання господарських договорів, що вчиняються через мережі електров'язку : автореф. дис. ... канд. юрид. наук : спец. 12.00.04 «Господарське право, господарсько-процесуальне право» / А.В. Чучковська. – К., 2004. – 20 с.

<sup>18</sup> Борисова Ю.О. Цивільно-правове регулювання відносин у сфері електронної комерції : автореф. дис. ... канд. юрид. наук : спец. 12.00.03 «Цивільне право і цивільний процес; сімейне право; міжнародне приватне право» / Ю.О. Борисова. – К., 2012. – 19 с.

<sup>19</sup> Тардаскіна Т.М. Електронна комерція / Т.М. Тардаскіна, Є.М. Стрельчук, Ю.В. Терешко. – О. : ОНАЗ ім. О.С. Попова, 2011. – 244 с.

<sup>20</sup> Електронна комерція і право / уклад. А.А. Маєвська. – Х., 2010. – 256 с.

<sup>21</sup> UNCITRAL Model Law on Electronic Commerce Guide to Enactment with 1996 with additional article 5 as adopted in 1998 [Electronic resource]. – Access mode : [http://www.uncitral.org/uncitral/en/uncitral\\_texts/electronic\\_commerce/1996Model.html](http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/1996Model.html).

and storage of information”<sup>22</sup>. Some authors believe that the main drawback of the Model law is the fact that it does not give definitions either to paper document or the written form<sup>23</sup>. Others disagree with this opinion, inasmuch as: a) the consolidation of the definition of the written form and the paper form may serve to limit broad interpretation in the case of the emergence of new ways of fixing the will of the parties; b) the consolidation does not meet the basic approaches offered by the Model law<sup>24</sup>;  
2) the UNCITRAL Model Law “On Electronic Signatures” dated 2001.

*Council of Europe* adopted such acts as: the Convention for the protection of individuals with regard to automatic processing of personal data from 28.01.1981 as well as Additional Protocol to the Convention for the protection of individuals concerning the automated processing of personal data, regarding Supervisory authorities and transborder data flows from 08.11.2001 (Strasbourg); Convention on information and legal cooperation concerning “information society services” from 04.10.2001; Council of Europe Convention on cybercrime from 23.12.2001.

The *International Chamber of Commerce* adopted: General requirements for certified digital international commerce (1997); General principles of advertising and marketing on the Internet (1998).

United Nations Economic Commission for Europe *and the UN Center for Trade Facilitation and Electronic Business* adopted the following acts: The Model Interchange Agreement for the International Commercial Use of Electronic Data Interchange (The Annex to Recommendation 26 “Commercial use of the exchange agreements for electronic data interchange”, adopted by the Working Party on Facilitation of International Trade Procedures of United Nations Economic Commission for Europe from 23.06.1995); Agreement on electronic Commerce (Recommendation 31, adopted by the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT), March 2000, Geneva). It is worth mentioning the Rules for the UN Electronic Data Interchange for Administration, Commerce and Transport (UN/EDIFACT, 1988), designed to co-ordinate the technical parameters of electronic data exchange. With the aim of increasing the legal security of parties in commercial transactions the UN European Economic Commission prepared a model contract in 1995 for the international commercial use of electronic data interchange. The recommendations do not apply to commercial contracts in general, but only in terms of direct electronic data transfer.

Most of these acts have a declarative direction or reinforce only general principles for the regulation of certain legal relations on the Internet. This is due to the fact that legislators, as noted by O. Vorobyova<sup>25</sup>, consistently, and most importantly – carefully improve the mentioned norms.

Along with international organizations, United Nations Centre for Trade Facilitation and Electronic Business, UN Center for Facilitation of Procedure and Practices for Administration, Commerce and Transport, UN Economic Commission for Europe (UN/CEFACT), the Organization for the Advancement of Structured Information Standards (OASIS) the efforts were combined in 1999 in the development of the international standard of language XML (Extensible Markup Language) for electronic business (ebXML) which is a technical basis for the unification of the commercial exchange of electronic data. It is worth to mention such a document as the Declaration on Global Electronic Commerce adopted by the WTO Ministerial conference (WT/MIN(98)/DEC/2).

The unification of rules of international law regulating the Internet functioning in the EU is also very important. We should single out the key directives and resolutions including:

- 1) Directive 97/7/EC of the European Parliament and of the Council dated 20.05.1997 on the protection of consumers in respect to distance contracts (distance selling);
- 2) Directive 97/66/EC of the European Parliament and the Council dated 15.12.1997, with regard to the processing of personal data and the protection of privacy in the telecommunications sector;
- 3) Directive of the European Parliament and the Council 1999/93/EC of 13.12.1999 on the legal framework

<sup>22</sup> Resolution adopted by the General Assembly of the United Nations (on the report of the Sixth Committee (A/51/628)) 30.01.1997 A/RES/51/162 [Electronic resource]. – Access mode : <http://www.un.org/documents/ga/res/51/ares51-162.htm>.

<sup>23</sup> Борисова Ю.О. Цивільно-правове регулювання відносин у сфері електронної комерції : автореф. дис. ... канд. юрид наук : спец. 12.00.03 «Цивільне право і цивільний процес; сімейне право; міжнародне приватне право» / Ю.О. Борисова. – К., 2012. – 19 с.

<sup>24</sup> Василенко О.С. Розвиток наукової думки в сфері уніфікації правил електронної комерції в рамках ЮНСІТРАЛ / О.С. Василенко // Порівняльно-аналітичне право. – 2013. – № 3-2. – С. 106–108.

<sup>25</sup> Воробйова О.П. Нормативно-правове забезпечення електронної комерції: міжнародний досвід / О.П. Воробйова // Ефективність державного управління : зб. наук. праць. – 2012. – Вип. 30. – С. 269–275.

of the Commonwealth for electronic signatures. This document has regulated to the fullest extent the relations in the sphere of using of electronic signatures. The aim of its adoption is providing business operations through the Internet;

- 4) Directive 2000/31/EC of the European Parliament and the Council dated 08.06.2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market (Directive on electronic commerce), whose main task is to ensure conditions for the proper functioning of the international e-commerce between the countries – member of the EU<sup>26</sup>. The preamble of the Directive states that “the development of e-commerce in the information society opens up the prospects of employment in the Community, especially for small and medium-sized enterprises, and will stimulate economic growth and investment of European companies”. Compared to the UNCITRAL Model law, the Directive is a fairly large document that determines the legal regulation of a significant range of social relations in the sphere of electronic commerce. In addition to the General provisions, this document contains a set of rules which regulate in more detail certain aspects of electronic commerce. The Directive regulates the relations in such areas as: recognition of electronic contracts; the recognition of the enforceability of electronic contracts; the procedure of conclusion of contracts online and the minimum requirements to provision of information to participants of the contract (essential terms of an electronic contract); liability of intermediary service provider for sending, receiving or storing electronic documents and providing access to the network, and informing the parties about the technical side of transactions in electronic form. Commerce depends on trust between the parties. The parties to an electronic transaction must have a certain degree of trust in their partners, characteristic of conventional methods of transactions, that is, to have a certain degree of trust in the partner, characteristic of conventional methods of transactions, that is, to be sure that the transaction is legitimate in the following sense: the buyer and the seller are who they say they are; the seller has the right to sell the goods; the buyer has at his disposal the means for conducting the transaction; mechanisms of delivery and payment are possible, legal and safe; the goods sold conform to the description and are appropriate; the purchased product (or service) can and will be delivered to the buyer<sup>27</sup>. The Directive presupposes the principle of non-discrimination (in the EU countries contracts shall not be deprived of legal validity solely on the basis that they are concluded in the electronic form);
- 5) Directive 2000/46/EC of the European Parliament and the Council dated 18.09.2000 on the implementation and supervision of the business activities of agencies in the field of electronic money;
- 6) Directive 2002/58/EC of the European Parliament and the Council dated 12.07.2002, with regard to the processing of personal data and the protection of privacy in the electronic communications sector;
- 7) European Parliament Resolution on the safe use of the Internet and new online technologies dated 02.12.2004. Beginning with the 1st of July 2004, on the territory of the 15 EU countries the Directive came into force, which establishes new rules and taxation of Internet Commerce. Now any “digital sales” are subject to VAT (domestic analogue – value added tax), which is primarily concerned with the taxation of foreign online traders.

Activities of international organizations is aimed at solving the most important problems of e-commerce: provide equal status for conventional and electronic documents (the latter are a collection of information in digital form, which can be converted to a readable (visual) form); the regulation of the use of data encryption in the process of transitting information in global telecommunication environment; prevention of unauthorized distribution of personal data transmitted in the conclusion and execution of transactions; protection of the interests of the parties of cross-border operations; regulation of the role and responsibility of the third parties of transactions, which represent the communication medium, carry out certification procedures, perform the procedure to compensate any losses incurred by participants in electronic commerce (insurance of risks); regulation of relations with state authorities regarding taxation, payment of customs tariffs, fees and charges; consumer protection, protection of intellectual property rights. In Ukraine, the work on the creation of legal foundations of e-commerce began in 1998 with the adoption of the Law of Ukraine “On National Program of Informatization” 04.02.1998 № 74/98-BP<sup>28</sup>. At the same time the Concept of the National Informatisation programme was approved and the Law of Ukraine “On Approval of the Tasks of the National Informatisation Programme for

<sup>26</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (“Directive on electronic commerce”) [Electronic resource]. – Access mode : <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32000L0031>.

<sup>27</sup> Brown K. The World Economics and Internet / K. Brown, P. Siegl. – Sydney : NUS Commerce Press, 1999. – P. 233.

<sup>28</sup> Про Національну програму інформатизації : Закон України від 4 лютого 1998 р. № 74/98-ВР [Electronic resource]. – Access mode : <http://zakon2.rada.gov.ua/laws/show/74/98-вр>.

1998–2000” 04.02.1998 № 76/98-BP was adopted. The next step was the Decree of the President of Ukraine “On Measures for the National Component of the Global Information Network Internet and Providing Wide Access to the Internet in Ukraine” 31.07.2000 № 928/2000<sup>29</sup>. Later, the Laws of Ukraine “On Electronic Digital Signature” 22.05.2003 № 852-IV<sup>30</sup>, “On Electronic Documents and Electronic Document Flow” 22.05.2003 № 851-IV were adopted<sup>31</sup>. The latter law defines the concept of electronic document and electronic document flow, establishes the global trends concerning the recognition of the legal force of the electronic document that specifies the rights and duties of subjects of electronic documents, their liability etc. The law generally follows the functional-equivalent approach to the understanding of the electronic document proposed by the UNCITRAL Model law “On Electronic Commerce”<sup>32</sup>, which is based on the study of the purposes and functions of the traditional requirements for the preparation of documents in the paper form in order to determine how these purposes and functions can be achieved or performed through methods used in the electronic transmission of data. In addition, the following laws are in operation in Ukraine: the Law of Ukraine “On the Basic Principles for the Development of an Information-Oriented Society in Ukraine for 2007–2015” 09.01.2007 № 537-V<sup>33</sup>, the Law of Ukraine “On Payment Systems and Money Transfer in Ukraine” 05.04.2001 № 2346-III, NBU Board Resolution “Rules of the protection of electronic banking documents using information protection facilities of the National Bank of Ukraine” 02.04.2007 № 112, NBU Board Resolution “Regulation of electronic money in Ukraine” 04.11.2010 № 481 and other normative legal acts affecting the legal regulation of relations in the sphere of electronic commerce.

The latest and most significant milestone in the history of legal regulation of relations in the field of e-commerce has been the Law of Ukraine “On Electronic Commerce” 03.09.2015 № 675-VIII<sup>34</sup>. The Law introduces into the commercial and scientific use a number of new terms, including “e-contract”, “electronic commerce”, “electronic transaction”, “online store”, “commercial electronic message” etc. At the same time, the concept of electronic transactions given in the Law is uninformative in nature, not perfect in content, because it does not contain the identifying characteristics of a particular transaction. It is not clear from its contents on what basis it is different from other transactions provided by law. This concept can be applied to any transaction, the process of fulfillment of which is connected to the use of information and telecommunication systems. Moreover, there is no required classification of electronic transactions. Thus, the Law does not distinguish between transactions that occur in electronic form, however, they are carried out in the traditional way (buying and selling in the Internet stores of food and industrial goods), and transactions that occur entirely on-line: the product or service has an electronic form, and its delivery is carried out with the help of information and telecommunication systems (a computer program, audiovisual work in the form of a file, access to database etc.).

The law defines a wide range of stakeholders in the field of electronic Commerce. In accordance with article 6 of the Law, they are the subjects of e-commerce, the providers of services of an intermediate character in the information field, the bodies of state power and bodies of local self-government exercising the functions of state or local government.

The seller (contractor, supplier) of goods, works and services in e-commerce during his/her activities and in the case of the commercial electronic messages dissemination must provide a direct, simple, stable access of other participants of relations in the field of e-commerce to the following information: the full name of the legal entity or surname, name, and patronymic of the individual entrepreneur; location of the legal entity or the place of registration and place of actual residence of a natural person – entrepreneur; e-mail address and/or address of the online store; the identification code for a legal entity or registration number of accounting card of the taxpayer for a physical person – entrepreneur, or a series and passport number for a natural person – entrepreneur, who, due their religious beliefs, refused the adoption of the registration number of the taxpayer card and

<sup>29</sup> Про заходи для розвитку національної складової глобальної інформаційної мережі Інтернет та забезпечення широкого доступу до цієї мережі в Україні : Указ Президента України від 31 липня 2000 р. № 928/2000 [Electronic resource]. – Access mode : <http://zakon2.rada.gov.ua/laws/show/928/2000>.

<sup>30</sup> Про електронний цифровий підпис : Закон України від 22 травня 2003 р. № 852-IV [Electronic resource]. – Access mode : <http://zakon0.rada.gov.ua/laws/852-15>.

<sup>31</sup> Про електронні документи та електронний документообіг : Закон України від 22 травня 2003 р. № 851-IV [Electronic resource]. – Access mode : <http://zakon2.rada.gov.ua/laws/show/851-15>.

<sup>32</sup> UNCITRAL Model Law on Electronic Commerce Guide to Enactment with 1996 with additional article 5 as adopted in 1998 [Electronic resource]. – Access mode : [http://www.uncitral.org/uncitral/en/uncitral\\_texts/electronic\\_commerce/1996Model.html](http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/1996Model.html).

<sup>33</sup> Про Основні засади розвитку інформаційного суспільства в Україні на 2007–2015 роки : Закон України від 9 січня 2007 р. № 537-V [Electronic resource]. – Access mode : <http://zakon2.rada.gov.ua/laws/show/537-v>.

<sup>34</sup> Про електронну комерцію : Закон України від 3 вересня 2015 р. № 675-VIII [Electronic resource]. – Access mode : <http://zakon2.rada.gov.ua/laws/show/675-19>.

officially reported it to the appropriate state tax authority and has a mark in the passport; license information (series, number, validity and date of the issue) if the economic activities are subject to licensing; the inclusion of taxes in the calculation of the cost of goods, work, services and, in the case of delivery of the goods, – the information about the cost of shipping; other information that, in accordance with the legislation, shall be made publicly available. In the process of conducting an electronic transaction he is also required to ensure the full appropriateness of the subject of electronic contract, agreed upon by the parties, the quantitative and qualitative characteristics.

If the seller (contractor, supplier) offers the other side of the electronic agreement to provide him with the information on the payment instruments to pay the cost of goods, work, services, he is obliged to protect such information in accordance with the laws of Ukraine “On Information Protection in Information and Telecommunication Systems” and “On Payment Systems and Money Transfer in Ukraine”. He has the right to claim from the other party only such information, without which the conclusion and performance of the obligations of the electronic contract cannot be fulfilled. These are the peculiarities of the legal status of the seller (contractor, supplier) of goods, work, services in e-commerce. The law, however, does not contain any specific provisions regarding the participation in e-commerce intermediaries, direct performers of transactions (couriers, suppliers, delivery operators, etc.) regarding the delivery, receiving payment, issuing receipts, etc. Therefore, the cases of paying to a courier (third party) the cost of goods (courier services, admittedly, are employed by the majority of Internet-shops) or payments on delivery at the post office still cause a lot of problems in the context of their legal qualifications and regulation. A business entity – a mediator cannot issue a fiscal receipt on behalf of the shop – the owner of the product. At the same time, in case of paying in cash, the buyer has the right to receive a check. Unfortunately, the new instruments are not offered by the Law to manage this type of trade. The law does not contain the necessary provisions concerning the specifics of consumer protection in the case of purchasing goods, work or services via performing electronic transactions, as well as features of advertising and the sale of certain goods, the implementation of which is associated with certain limitations (drugs, alcoholic beverages, tobacco products).

The law, as intended, is designed to facilitate paper document flow of sellers (online stores), provides amendments to the Law of Ukraine “On Accounting and Financial Reporting in Ukraine”; – it is possible now to arrange primary documents in the electronic form. On the one hand, some simplifications are obvious, on the other hand – business entities and their accountants faced with unresolved regulatory issues of accounting on the basis of electronic documents. It is an obvious fact that there is a complex of unregulated relations connected to the use of electronic information in such spheres as: customs clearance and taxation, electronic payment systems, intellectual property protection, security, privacy, etc.

Summing up the above, we will provide a partial list of activities that are designed to provide effective legal regulation of electronic commerce in the future.

First, the adoption of the Law of Ukraine “On Electronic Commerce” for some reason does not entail changes in the existing Economic Code of Ukraine. The final provisions of the law amend the Civil Code relative to electronic forms of transaction, etc., while electronic forms of commercial contracts, e-commerce, etc. at the level of the commercial code has not been regulated yet. The creation for the participants of economic relations with the intention to conclude an economic agreement in the electronic form or the electronic correspondence concerning the establishment of economic ties, the so-called “intelligent platform” or “electronic pad”, where each of the entities could register and obtain a digital signature is promising. This system, of course, must be protected from the unauthorized interference. Thus, first of all, for the normal functioning and development of electronic commerce, it is necessary to define at the level of the Economic Code of Ukraine (the current codified act of economic legislation) of the mechanism of conclusion and execution of commercial contracts using the Internet and legalization of these methods of settlement payments. It is obvious that the Law of Ukraine “On electronic Commerce” needs to be supplemented with the provisions that will regulate the implementation of the electronic contract in the case when this execution is to obtain certain information in electronic form as well as in the necessity to use the delivery of goods in the tangible form. Only a systematic approach is necessary in this case.

The confirmation for this can be the unsuccessful (due to the inconsistency of individual acts of economic, financial, banking legislation, etc.) liberalization of the market of electronic money. Consequently, entering of the international systems of online payment, electronic money issuers – non-residents into the Ukrainian market remains questionable despite a fairly progressive character of the today’s updated in 2016 NBU Board Resolution “Regulation of electronic money in Ukraine” 04.11.2010 № 481. The Commercial Code in this case has been left unchanged.

Secondly, the bringing of Ukrainian legislation in the field of e-commerce in accordance with EU legislation should aim to make domestic entrepreneurs full participants in the electronic market of the EU and to contribute to the growth of sales of goods and services of Ukrainian enterprises in EU markets. This applies, for example, to norms that will contribute to the recognition of the validity and legal force of generated in Ukraine electronic signatures and electronic certificates issued in Ukraine. The convergence with the norms of EU legislation that do not affect the development of free trade between Ukraine and the EU, as well as the adoption of which makes sense only under the condition of EU membership (for example, the norms of the e-Commerce Directive regarding administrative cooperation) should be avoided.

In the process of the development of legislation on certain issues of electronic commerce that are incomplete or fail to be resolved by the EU legislation (for example, elimination of on-demand content), better decisions of the United States legislation or other countries' legislation should be taken as a model, including individual member States of the EU (for example, derived from US legislation, the legislation of Finland regarding the elimination of on-demand material infringing copyright) (Complex comparative legal research of the conformity of Ukraine *acquis communautaire* in the field of electronic commerce (e-commerce)<sup>35</sup>).

Thirdly, the development and improvement of Ukrainian legislation in this sphere should take into account the principle of technological neutrality (a state may not give preference to a certain equipment that provides electronic data exchange), and the principle of transparency, defined as "ensuring accessibility to appropriate information on conditions of access to networks and public services", in accordance with article 4 of the GATS Annex on communication.

In general, the provisions of the UNCITRAL Model law "On Electronic Commerce"<sup>36</sup> deserve special attention in this aspect, which explicitly does not contain a list of principles that sustain e-commerce, but the content analysis of which allows to highlight the following principles: 1) the free implementation of e-commerce means that individuals realizing e-commerce do not need to obtain prior permission of the authorized state body on settlement of transactions via the telecommunications network; 2) non-discrimination of transactions performed via the telecommunications network means that the paper media and electronic media of the written form are equivalent from the point of view of state authorities and legislation; 3) openness, technological neutrality seeks to ensure that the law does not provide advantages to only one type of technology and is common and therefore suitable for new technologies (besides, this principle allows the use of different technological solutions with different reliability and therefore, different legal implications of such decisions); 4) the guaranteeing of legal protection of rights to persons who conduct e-commerce. Hence, it is appropriate to borrow the principles of e-commerce and secure them in the Civil Code, which will promote legal certainty in the field of electronic commerce in Ukraine.

The development of e-commerce will not have real prospects if its members do not have the ability to protect their rights and legitimate interests, in particular, in court. Therefore, one of the shortcomings of the Law of Ukraine "On Electronic Commerce" is the lack of regulation of issues related to the resolution of disputes between the buyer and the seller. In the case of a dispute and its proceedings, the court is obliged to confirm the transaction by accepting the documents submitted by a party, but each party may present as evidence their version of the documents since obtaining of their own electronic signature for the buyer is quite problematic today. Taking into account the fact that each party must prove the fact of the transaction, the court is not in every case able to determine the transaction that was performed. In this context, among other things, the rules of evidence presentation in the electronic form, with a digital signature etc. must be well defined at the legislative level. Unfortunately, the way to solve this issue proposed by the Law of Ukraine "On Electronic Commerce" is not a proper basis for declaring the admissibility of evidence in the electronic form, since procedural codes remain without appropriate changes. As an example, article 11 of this Law provides that electronic messages or electronic documents comprising the electronic transaction may be submitted as forensic evidence. The admissibility of evidence may not be challenged solely on the grounds that they are in electronic form or in the form of paper copies of electronic messages. The burden of proving the existence of electronic transactions and the integrity and invariability of electronic messages, comprising the contents of the transaction lies with the parties of such transaction. But, at the same time, the economic litigation is made according to the Economic procedural code of Ukraine, that lacks the concept of "forensic evidence". Therefore, the established theory of ev-

<sup>35</sup> Комплексне порівняльно-правове дослідження відповідності законодавства України *acquis communautaire* у сфері електронної торгівлі (e-commerce) [Electronic resource]. – Access mode : <http://www.minjust.gov.ua>.

<sup>36</sup> UNCITRAL Model Law on Electronic Commerce Guide to Enactment with 1996 with additional article 5 as adopted in 1998 [Electronic resource]. – Access mode : [http://www.uncitral.org/uncitral/en/uncitral\\_texts/electronic\\_commerce/1996Model.html](http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/1996Model.html).

idence which can be used in the economic process requires to be revised since the law is proposes to admit the admissible evidence submitted in the electronic form or in the form of paper copies of the electronic messages, however, there is no a clear defined form that would allow the courts to clearly assess the evidence submitted by the parties.

### Summary

The article is devoted to the international experience and the problems of legal regulation of e-commerce in Ukraine. It elucidates the existing approaches to the definition of e-commerce as well as systematizes them. The authors examine the international experience, and identify the legal basis for the regulation of relations in the sphere of e-commerce in Ukraine. The Law of Ukraine "On Electronic Commerce" has been analyzed, its advantages and disadvantages have been determined. A list of priority measures, which ultimately are intended to provide the necessary effective legal regulation of electronic commerce in Ukraine, has been compiled.

### Анотація

Статтю присвячено міжнародному досвіду та проблемам правового регулювання електронної комерції в Україні. Висвітлено існуючі підходи до визначення поняття електронної комерції та систематизовано їх. Досліджено міжнародний досвід, а також визначено правову основу регулювання відносин у сфері електронної комерції в Україні. Проаналізовано Закон України «Про електронну комерцію», його переваги й недоліки. Сформовано перелік першочергових заходів, які в перспективі покликані забезпечити необхідне ефективне правове регулювання електронної комерції в Україні.

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