

CHAPTER 9

LEGAL REGULATION OF ELECTRONIC MONEY CIRCULATION (ON THE EXAMPLE OF LEGISLATION IN EU AND IN UKRAINE)

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Introduction

According to Art. 139 p. 6 Clause 6 «Financial Services» about the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other part, dated 03.21.2014 (hereinafter – Agreement Association), the parties of this association have agreed to promote the development of electronic commerce between them¹. At present stage, electronic money is widely used in e-commerce.

Electronic money emerged in the late 80s of the XX century, eventually experienced rapid development and increasingly occupied financial market. According to the Bank for International Settlements, the volume of transactions with electronic money in circulation in 2005 amounted to 41 million dollars, in 2010 – to 25 billion dollars and in 2015 – to 400 billion dollars. The popularity of electronic money attracted attention to the issue of the need for their legal regulation.

In foreign countries, theoretical studies on the economic, technical and legal aspects of emissions and circulation of electronic money have begun almost immediately after their emergency on the market, and in 1998 the European Central Bank, on the basis of an analysis carried out by the European Monetary Institute, has already noted the need for legislative fixing of clear rules that would regulate the relationship with the emission of electronic money. Since then, the legal regulation of electronic money circulation has constantly developed in the EU countries, which has created an effective system for regulating the issue and circulation of electronic money, known as the «European Model of Electronic Money

¹ Agreement on Association between Ukraine, on the One Hand, and the European Union, the European Atomic Energy Community and their Member States, on the other Hand, dated 21.03.2014, URL : http://www.kmu.gov.ua/control/uk/publish/article?art_id=2483876311.

Circulation Regulation», which was originally implemented in the norms of the Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 “On the taking up, pursuit of and prudential supervision of the business of electronic money institutions”, and then, taking into account the practice of its application and the changes that have taken place in the technological aspects of electronic money, in the norms of the Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 “On the taking up, pursuit of and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC”.

Despite the fact that in the EU countries for two decades financial and legal regulation of the circulation of electronic money was developing, Ukraine did not even attempt to develop special regulations that would regulate such legal relations, while since the beginning of the 2000s such operators of electronic money as WebMoney Transfer, Limonex, UkrMoney, Yandex.Money and others began to function actively in our country. According to analytical calculations (official statistics are not available), the electronic money market in Ukraine in 2003 was UAH 308.64 million, and in 2015 – UAH 1.85 billion.

The lack of normative regulation of emissions and circulation of electronic money in Ukraine aroused numerous legal problems, since the functioning of electronic money operators under conditions of legal uncertainty gave them opportunities for abuse, the creation of tax optimization schemes that bordered by tax evasion, allowed the use of funds in illegal transactions, and other participants of the financial market from the circulation of electronic money put in a disadvantage, because the state did not provide them the reliable legal protection etc.

The first normative act aimed at the regulation of the circulation of electronic money in Ukraine (the Regulation on Electronic Money, approved by the Resolution of the National Bank of Ukraine No. 178). Ukraine’s aspiration for Eurointegration necessitates the further development of legal regulation of electronic money circulation in accordance with the norms of European legislation.

9.1. Legal regulation of circulation of electronic money in the EU

The issue of legal regulation of electronic money circulation in the EU was initiated by the Commission of the European Communities on January 12, 1987, whose members stated that most multifunctional payment cards are issued by non-banking organizations and other institutions, while in the interests of protecting the integrity of the retail payment system, protection of consumers from the consequences of the refusal of issuers of electronic purses to make payments for them, the need for a consistent credit policy, the supervision of free the competition between issuers, the right to issue electronic purses should be given exclusively to credit organizations, or be put on organizations that are eager to release electronic purses, etc.² A Working Group on Payment Systems was set up, which in 1994 prepared the «Report for the Council of Europe on Prepaid Cards» and transferred it to the European Monetary Institute (the prototype of the European Central Bank), which proposed to limit the right to issue electronic money exclusively by banks³.

However, since the publication of the report there has been a surge in the use of electronic money, due to the development of the Internet. In 1997, when the circulation of electronic money gained momentum, the Council of the European Monetary Institute drew attention to the problems of their circulation and, on the basis of the report previously discussed, prepared an annual report stating that at that stage, electronic money was not very widespread, but in the long-term aspect of the development of their widespread use cannot be avoided; in addition, it was considered that in the future, the issuance of electronic money will significantly affect the monetary policy. Based on this, it was considered to be important to establish the rules and conditions for the issuance of electronic money and the basic principles of the circulation of electronic money were formulated, including the insurance of obligations for non-bank organizations issuing electronic money, the exchange of electronic money on the banknotes of the central bank at par. at the request of the owner of electronic money; basic requirements for the status of organizations that carry out the issue of

² Commission Communication of 12 January 1987: "Europe could play an ace: the new payment cards" COM(86) 754 final.

³ Genkin, A.C. 2003, Legal Status of E-money and Electronic Payment Systems, Business and Banks 15, p. 23.

electronic money (regardless of their organizational and legal form and the availability of permission for banking) have been defined⁴.

In 1998, the European Central Bank, on the basis of an analysis, conducted by the European Monetary Institute, published a report that first recognized the need for legislative securing of clear rules governing the relationship between issuance and circulation of electronic money; the report outlined proposals for setting the necessary requirements for organizations issuing electronic money, minimum requirements for electronic money and minimum requirements for the protection of electronic money holders⁵. The report specifically emphasized that the most effective solution would be to grant the right to issue electronic money exclusively to lenders, as this would give the possibility to avoid a change in the existing institutional framework for monetary policy and banking activities⁶. An active position of the European Central Bank has led to the adoption of the Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 “On the taking up, pursuit of and prudential supervision of the business of electronic money institutions”⁷ (hereinafter – the Directive 2000/46/EC) devoted to the regulation of the circulation of electronic money. In addition to the general provisions regulating the issuance and circulation of electronic money (the concept of electronic money, issuing activities in the field of electronic money, the exclusion of electronic money circulation regulation, etc.), it included important amendments to the Directive 77 780/EEC regarding the definition of the term «credit organization» – supplemented by provisions on non-bank organizations that carry out the issue of electronic money. Thus, institutions and organizations that cannot carry out banking operations to the full extent have been given the opportunity to issue electronic money, subject to compliance with the rules governing the activities of credit organizations⁸.

⁴ Commission Recommendation of 8 December 1997 87/598/EEC on a European Code of Conduct relating to electronic payment (Relations between financial institutions, traders and service establishments, and consumers), Official Journal L 365, 24.12.1997.

⁵ Annual report 1997, EMI, Frankfurt am Main, 1998.

⁶ Report on Economic Money, European Central Bank, Frankfurt am Main, August 1998, 47 p.

⁷ On the taking up, pursuit of and prudential supervision of the business of electronic money institutions : Directive 2000/46/EC of the European Parliament and of the Council of 18.09.2000, Official Journal of the European Communities, L 275/39. 27.10.2000, 39–43.

⁸ On the taking up, pursuit of and prudential supervision of the business of electronic money institutions : Directive 2000/46/EC of the European Parliament and of the Council of 18.09.2000, Official Journal of the European Communities, L 275/39. 27.10.2000, 39–43.

In addition, the 2000/146/EC Directive – concept of electronic money has fixed a number of key provisions, the main among which were:

- the order of issuing activity in the field of electronic money, other than reception of deposits (when purchasing a pre-paid instrument, money has been immediately transformed into the value stored on an electron storage, while the mentioned transaction was not classified as an involving a deposit and was not fixed by the state schemes of guaranteeing deposits);

- obligations of the issuer on the exchange of electronic money issued by him for the money of central banks and the provision of financial statements;

- an exclusion from the system of regulation of electronic money of such types of the commitments that are emitted, which did not ensure the performance of functions of a valuable exchange medium, since it was used for a limited number of entities;

- the range of organizations corresponding to the definition of «institution in the field of electronic money circulation» by assigning to them non-banking institutions that were granted the right to issue electronic money on an unprofessional basis, to provide financial and non-financial services directly related to the issuance of electronic money (except of loans in any form); to invest funds at least equal to their financial obligations related to the issuance of electronic money in assets with low or zero risk;

- the introduction of the principle of a «single European window» for organizations issuing electronic money, which allowed a credit organization registered in one EU country to operate on the territory of the whole EU, under condition of an obtaining a European passport (single license);

- an establishment of requirements to the issuer of electronic money, intending to obtain a European passport (compliance with the principles of the First EU Banking Directive on Mutual Recognition of Licenses and Prudential Supervision and Principles of National Control of a Member State; compliance with the objectives of Directives 91/308 / EEC and 2000/12 / EC on preventing the use of the financial system for money laundering purposes);

- general rules in the field of licensing and supervision of these institutions, as well as restrictions on investment projects at the expense of

funds received from the emission of electronic money, specific requirements to the corporate governance system;

- minimum capital requirement (EUR 1 million, for banks – EUR 5 million), minimum and constant own funds (at least 2% of current or weighted average current liabilities over the last six months, for banks – 8%); and limitations of technical means for storing and accounting electronic money, the maximum amount of electronic money in 150 euros;

- an establishment of the requirement that investments by institutions in the field of circulation of electronic money of free funds should not be lower than financial commitments for issued electronic money, with investments not to exceed 20 times the own funds of the issuer of electronic money;

- requirements to the information on emissions and the circulation of electronic money in special control agencies at least 2 times a year, informing clients about possible deposit insurance, commissions, claims settlement procedures, liability for lost electronic money, product features, etc.;

- the procedure for the transfer of electronic money into the cash (the client was entitled to apply to the issuer for the equivalent and free exchange of the value that he owns in electronic money, in coins, banknotes or non-cash money in the account, and the issuer was not entitled to refuse it);

- there is no requirement for identification of clients and detection of suspicious transactions⁹.

At the same time, the aforementioned Directive provided for a significant number of exceptions that allowed the legal regulation of the circulation of electronic money through the rules of national law, which led to the uneven application of the rules of Directive 2000/46/EC in different countries – EU Member States.

Investigating the rules of Directive 2000/46 / EC, K.L. Ranchinsky noted that this Directive contained less stringent requirements for supervision and prudential control over the activities of issuers of electronic money in comparison with the requirements set forth in the Banking Directive for banks and other lending organizations due to other risks inherent in the issuance of electronic money and the desire to involve

⁹ On the taking up, pursuit of and prudential supervision of the business of electronic money institutions : Directive 2000/46/EC of the European Parliament and of the Council of 18.09.2000, Official Journal of the European Communities, L 275/39. 27.10.2000, 39–43.

non-bank organizations in this area; while the Directive stipulated more stringent requirements for institutions in the sphere of circulation of electronic money in relation to investment activity at the expense of funds received during the issue and it was imposed a ban on certain types of activities¹⁰. G. Kuchinska, analyzing the importance of Directive 2000/46/EC for the development of electronic money, noted that it played a significant role in streamlining the circulation of electronic money, since, on the one hand, it was in force in the territory of the EU, and on the other – its provisions were subject to mandatory implementation in national legislation, since this Directive was considered not only as a step towards unification and harmonization of normative regulation of electronic money circulation, but also as a benchmark for the countries where the process of national legislation development in the regulation of electronic money had been continuing¹¹.

In October 2002, the Association of Electronic Money Institutions in the Netherlands conducted a study on the implementation of the provisions of Directive 2000/46/EC in the legislation of the EU Member States, which found out that 5 of the 15 countries did not implement its norms in their legislation due to differences in national legal regulation of the banking system (in different countries, the same issuer can be recognized both as an emitter of electronic money and as a banking system; even within one country, almost identical emitters of electronic money could have varied legal status depending on the technical differences)¹². However, by 2004, most EU member states have unified their legislation in accordance with the provisions of the Directive 2000/46/EC.

Foreign scholars, in particular M. Vereecken, noted the excessive severity of the provisions of Directive 2000/46 / EC with regard to the size of statutory capital, minimum reserves and asset management methods¹³. Indeed, the charter capital of EUR 1 million was redundant and disproportionate to the risks accompanying the services associated with the issuance of electronic money; since it prevented the entry of small firms

¹⁰ Ranchinsky, K.L. 2011, "Issues of the Legal Status and Regulation of Electronic Money in the EU Countries", Herald of the RUDN University 1, p. 73.

¹¹ Kuchinskaya, A.R. 2012, "The Legal Nature of Electronic Money", Mogilev State A. Kuleshov University 2(40), p. 64.

¹² Genkin, A.S 2003, "The Legal Status of Electronic Money and Electronic Payment Systems, Business and Banks" 15, p. 26.

¹³ Vereecken, M.A. 2000, "Single Market for Electronic Money", Journal of International Banking Regulation, July. p. 70

into the financial market (they could not obtain a license for the issue and circulation of electronic money).

However, due to the relatively small volume of electronic money circulation in the first years after the adoption of the above-mentioned Directive, no active steps were taken to amend its norms, while the development of technologies and volume of payments by electronic money increased (according to the European Central Bank, if in the beginning of 2000 only 1% of non-cash payments were made by using electronic money, then in the middle of 2000s their volume reached 10%), which caused new gaps in the rules of the Directive 2000/46/EC.

In addition, the status of credit institutions as institutions in the field of electronic currency has caused the emergence of new issues in this area: whether money received through the issuance of electronic money, can be considered as a deposit, and if it is so, can interest accrue to them; whether the institutions that issue electronic money have the right to issue loans in electronic money, etc. The European Commission and the ECB drew a conclusion that such forms of activities cannot be carried out by credit institutions, but this approach contradicted the general understanding of the status and functions of credit institutions, which, in turn, delayed the adoption of a number of national regulatory acts, providing for their own mechanism of legal regulation of these issues. The situation was aggravated with the adoption of the Directive 2007/64/EC of the European Parliament and of the Council of November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC¹⁴, in which the concept of «payment services» was set forth and the conditions for non-cash settlements were established.

The next stage in the development of the legal framework for the circulation of electronic money in the EU countries has become the Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 On the taking up, pursuit of and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (hereinafter – Directive 2009/110/EC)¹⁵.

¹⁴ Directive 2007/64/EC of the European Parliament and of the Council of November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC

¹⁵ Directive 2009/110/EC of the of the European Parliament and of the Council of 16 September 2009 On the taking up, pursuit of and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC), *Jornal of Financial Services Research*, 2009.

Directive 2009/110/EU introduced a number of novelties into the legal regulation of the circulation of electronic money:

- a new definition of electronic money as a monetary value, which is expressed by the requirements to the issuer, stored by electronic (including magnetic) storage, which is emitted when cash is received in order to carry out payment transactions, specified in Clause 5 of Art. 4 of the Directive on Payment Services in internal markets dated 13.11.2007 (hereinafter – Directive 2007/64/EC)¹⁶);

- the acts initiated by a payer or a receiver for the placement, transfer or withdrawal of funds, irrespective of any liabilities, between the payer and the payee) accepted by individuals and legal entities other than the issuer;

- electronic money is classified as cash placed directly at the disposal of the holder of cash and cash, which is stored remotely and managed through a special account of the holder of electronic money;

- the order of the organization of the issue of electronic money is regulated;

- the legal order of issuing by the payment service provider of the stored value in exchange for cash is set forth;

- equal conditions for all providers of payment services, issuing electronic money are legally stipulated;

- it is provided the order of electronic money status in cases where a financial instrument of one-use or limited use in the process of development becomes a tool of multi-purpose or universal use;

- the circle of emitters of electronic money, including the European Central Bank and national central banks, when they do not act as monetary regulators and do not fulfill the functions of public regulators; member states or their regional and local authorities when they do not function as public regulators is set forth; lending institutions whose activities consist in receiving deposits or other funds payable from the population and providing loans at their own expense, their branches; emitters of electronic money – legal entities authorized to issue electronic money, their branches;

¹⁶ Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC, URL : <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32007L0064>

post offices, which are allowed by national legislation to issue electronic money¹⁷.

The comparison of the rules of the Directive 2000/46/EC with the norms of the Directive 2009/110/EU allows to state that the main changes introduced into the legal regulation of the circulation of electronic money in the EU countries were: to reduce requirements for the authorized capital of institutions issuing electronic money from 1 million euro to 350 thousand; to replace capital requirements by new calculation requirements, taking into account the nature of the activities of institutions issuing electronic money and risk structures; to provide the activities of institutions issuing electronic money expanded (in addition to issuing electronic money and providing services directly related to the issuance of electronic money, provided an opportunity to provide payment services, to issue loans within the limits of payment services provided (provided that they issued not from funds that were involved in exchange for electronic money), to operate payment systems, etc.); to secure the right of users to return the money free of charge at any time, subject to the full refund of electronic money; it is provided that the issuer of electronic money is able to charge commission in accordance with the transaction value if the issuer provided in a contract with the user. By the definition of V.S. Aksenov, N.V. Zakharova, the provisions of Directive 2009/110/EC were developed in accordance with the provisions of Directive 2007/64/EC, and created the basis for providing market access for new players, an effective competitive environment for all participants in order to introduce innovations in the payment market¹⁸.

The experience of legal regulation of the issue and circulation of electronic money in the EU shows that too strict methods of financial regulation, setting forth the requirements to emitters of electronic money, have become an obstacle to the further development of the entire system of electronic payments, resulting in determining the requirements for the institutions in the field of electronic money circulation, so it is necessary to apply a balanced approach which takes into account both the public-law

¹⁷ Directive 2009/110/EC of the of the European Parliament and of the Council of 16 September 2009 On the taking up, pursuit of and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC), *Jornal of Financial Services Research*, 2009.

¹⁸ Aksenov, V.S., Zakharova, N.V. 2010, "The State Regulation of Circulation of Electronic Money in Foreign Countries", *Economic Journal* 2, p. 115.

and the private interests of all participants in the circulation of electronic money.

The provisions of the Directive 2009/110/EC, as well as the provisions of the Directive 2000/46/EC, were also subject to the mandatory implementation in the national legislation of the EU, until April 2011, but according to the decision of the national authorities, a number of provisions of the Directive 2009/110/EC could not be implemented in the national laws of the EU countries. Thus, the provisions of the abovementioned Directive were not applied to organizations that were formally involved in the issuance of electronic money whose par value did not exceed 6 million euros; in cases when previously issued electronic money was taken by a pre-limited number of enterprises; in the case of a clear geographical location of the issuer; in the case of a contractual relationship between the issuer and the companies that took the electronic money.

The United Kingdom again became the first country to change the national legislation in line with the new Directive by adopting the Electronic Money Regulations, which was developed in accordance with Directive 2009/110/EC, taking into account certain features of national legislation: electronic money was defined as a monetary amount stored electronically (including on a magnetic storage, which is presented in the form of a requirement to the issuer of electronic money issuing (emitting) electronic money with the receipt (income) of funds to the account for the purpose of payment transactions, and which is accepted other than the issuer, persons (entities); electronic money was money based on payment cards, and electronic money based on computer networks; cannot be considered as electronic money: a) the amount held on instruments that can be used to supply goods and services only at the premises of the issuer of electronic money, or by virtue of a trade agreement with the issuer of electronic money, or within a limited network of service providers, or for the acquisition of a limited range of goods or services; b) the amount of money used for conducting payment transactions carried out by any means of communication or information devices where the goods or services purchased are delivered and must be used by means of communication, digital or information devices; electronic money institutions and their affiliates in the Unified Economic Space, small electronic money institutions, agents of these institutions, credit institutions, limited post

offices, the Bank of England, the European Central Bank (if they do not act as currency control bodies or other state bodies), government departments and local authorities that function as public regulators, credit unions, municipal banks, the National Savings Bank, etc.¹⁹.

In other countries, the implementation of national legislation has also taken place in accordance with the requirements of Directive 2009/110/EC and at the present stage in all EU countries this process has been completed. The national legislation was adopted either in accordance with the aforementioned Directive or more stringent than the ones stipulated by the Directive 2009/110/EC, requirements for institutions in the field of electronic money circulation: requirements for the minimum amount of electronic money issuers increased, maximum electronic purse was reduced, established investment restrictions, as well as the requirements for identifying the owner of the electronic purse were reduced; the right to issue cash money was granted exclusively to banks and credit organizations (Austria, Germany, Spain, Portugal); a ban on the simplified operation of emitters of electronic money (Italy, Lithuania) is settled; prudential regulation requirements (Greece, Sweden) were strengthened. To summarize, we note that the legal regulation of the circulation of electronic money in the EU states contains clear and understandable requirements for the circulation of electronic money, enabling the functioning of electronic money that already exists in the market, creates legal preconditions for the creation of new types of electronic money in the future, does not prevent introduction of new technological innovations. At the present stage, the main tendencies of financial and legal regulation of emissions and circulation of electronic money in the EU are: unification of categorical apparatus (the only approach to the definition of electronic money); 2) introduction of a simplified mode of operation of issuers of electronic money (unification of the issuance of licenses and securing the application nature of the use of simplified mode); 3) liberalization of the requirements for issuers of electronic money (permitting for non-bank institutions to issue electronic money, reducing the requirements for the minimum authorized capital).

¹⁹ The Electronic Money Regulations, URL : <http://www.legislation.gov.uk/uksi/2011/99/contents/made>

9.2. Normative regulation of electronic money circulation in Ukraine and the directions for its improvement in accordance with EU legislation

Normative regulation of the circulation of electronic money in Ukraine for a long time was almost not developed, except for individual regulations, the norms of which created the basis for the circulation of electronic money in the territory of Ukraine. One of the first such acts was the Order of the President of Ukraine «About the System of Electronic Money Circulation in Ukraine» dated April 30, 1992 No. 79, which provided that in order to ensure the transition to modern methods of credit and financial transactions, to improve the system of circulation of money and to protect economic Ukraine's interests it is necessary to develop the State Program for the creation of a system of electronic money circulation in Ukraine, the customer of which is recognized by the National Bank of Ukraine, and the developer – the Academy of Technological Sciences of Ukraine with participation of the public authorities²⁰.

On June 11, 1994 the Cabinet of Ministers of Ukraine adopted Resolution No. 390, envisaging the introduction of electronic control systems and commodity-money management²¹, according to which the National Bank of Ukraine developed the Concept of the system of electronic payments for goods and services in Ukraine, approved by the Decree of its Board July 18, 1994 [19]. On the basis of this Concept, on January 28, 1997 the Resolution of the National Bank of Ukraine «About the Introduction of the National System of Mass Electronic Payments in Ukraine» No. 18 was adopted on 28.01.1997, which provided the regulation of the implementation of mass electronic payment systems with use of payment cards on the territory of Ukraine²².

On May 20, 1999 the Law of Ukraine «About the National Bank of Ukraine» No. 679-XIV, in which Art. 7 it was assumed that the functions of the National Bank of Ukraine include the definition of the directions of the development of modern electronic banking technologies, creation and provision of continuous, reliable and efficient functioning and

²⁰ About the System of Electronic Money Circulation in Ukraine: Order of the President of Ukraine dated April 30, 1992, No. 79. URL : <http://zakon5.rada.gov.ua/laws/show/ru/79/92-rp>

²¹ About the Introduction of Electronic Systems for Control and Management of Commodity and Money Circulation: Resolution of the Cabinet of Ministers of Ukraine dated June 11, 1994 No. 390. <http://zakon2.rada.gov.ua/laws/show/390-94-п>

²² About the Introduction of the National System of Mass Electronic Payments in Ukraine: Resolution of the National Bank of Ukraine No. 24-/611-8439 dated 19.10.99., URL : <http://zakon2.rada.gov.ua/laws/show/v8439500-99>

development of payment and accounting systems established by them, the control over created payment instruments of banking automation systems and bank protection means information²³; but in Art. 40 it was noted that the National Bank of Ukraine establishes rules, forms and standards of settlements of banks and other legal entities and individuals in the economic circulation of Ukraine with the use of both paper and electronic documents, as well as payment instruments and cash, coordinates the organization of settlements, gives permits for the implementation of clearing operations and settlements²⁴; on 12.07.2000, the Law of Ukraine «About Banks and Banking» came into force from No. 2121-III, in which Art. 51 it is stated that non-cash payments were made on the basis of settlement documents on paper or electronically²⁵; on December 7, 2001, the Law of Ukraine «About State Regulation of Financial Services Markets» was passed from No. 2664-III, in which Art. 4 it is indicated that financial services are the issue of payment documents, payment cards, traveler's checks and/or its servicing, clearing, other forms of provision of settlements (including issuance of electronic money).

While in foreign countries over the course of two decades financial and legal regulation of electronic money circulation has developed, in Ukraine only a normative basis was created for the introduction of emitting and circulation of electronic money, and even there were no attempts to develop special regulations that would regulate such legal relations, in while since the beginning of the 2000s, such operators of electronic money as WebMoney Transfer, Limonex, UkrMoney, Yandex.Money and others have been active in its territory. According to analytical calculations (official statistics are not available), the electronic money market in Ukraine in 2003 amounted to UAH 308.64 million, and in 2015 – UAH 1.85 billion.

One of the main problems of legal regulation of the circulation of electronic money in Ukraine is the requirement for issuing electronic money exclusively by banks. In the study of the European model of emission and circulation of electronic money, it was determined that with the adoption of Directive 2009/110/EC, the circle of institutions in the field of electronic money circulation was expanded by assigning to them non-banking institutions that were granted the right to emit electronic money on

²³ About the National Bank of Ukraine: Law of Ukraine dated May 20, 1999 No. 679-XIV Information from the Verkhovna Rada of Ukraine 1999 № 29. Art. 238.

²⁴ About the National Bank of Ukraine: Law of Ukraine dated May 20, 1999 No. 679-XIV Information from the Verkhovna Rada of Ukraine 1999 № 29. Art. 238.

²⁵ About Banks and Banking: Law of Ukraine dated December 12, 2000 No. 2121-III, Information from the Verkhovna Rada of Ukraine 2001, № 5–6 Art. 30.

a non-professional basis, that is, abolished by a monopoly banks and other lending institutions for the issue of electronic money. Consequently, at the present stage, the norms of the national legislation of Ukraine are more burdensome than the norms of European legislation. As it is determined by P.M. Senish, V.M. Kravets, V.I. Mishchenko and other scholars, the world-wide experience in regulating the circulation of electronic money, have shown that in countries that have a strict rule for emitting electronic money only by banks, there are no national electronic money systems, and emitters of electronic money from other countries that rule more democratic (for example, most electronic money systems in the EU are registered in the UK and Luxembourg, since liberal regulatory requirements for e-money issuers are in these countries)²⁶). A.P. Novitsky, analyzing the requirements for the issuance of electronic money exclusively by banks, indicates that banks have the opportunity to offer their customers payment instruments that are related to the existing payment infrastructure in the form of non-cash accounts and online banking tools, therefore, electronic money systems are not for them a profile type of business, which, in addition, requires additional costs for the integration of such a system to the information systems of the bank²⁷. Consequently, the definition of the issuers of electronic money exclusively for banks is ineffective, but Ukraine has resorted to such a limitation. There is a logical question: why was it possible to exclude from circulation electronic money of other possible issuers who would like to participate in circulation, if the restrictions in the use of electronic money do not promote their spread? The reason for this is that electronic money allows for anonymous settlement transactions, which allows their users to avoid taxation and carry out illegal money laundering transactions. In foreign countries, this reason is eliminated by establishing a mandatory identification of accounts of legal entities and individual entrepreneurs, which are used for entrepreneurial activity.

Thus, in order to improve the legal regulation of the circulation of electronic money in Ukraine in accordance with the legal regulation of the circulation of electronic money in the EU countries, it is necessary: to expand the circle of emitters of electronic money by assigning non-bank institutions to them; establishment of the obligation to obtain licenses from non-banking institutions for the issue of rights and transactions with

²⁶ Senysh, P.M., Kravetz, V.M., Mishchenko, V.I. and others 2008, "World Experience and Prospects of Electronic Money Development in Ukraine": Scientific and Analytical Materials 10, p. 43.

²⁷ Novitsky, A. 2008, "Electronic money – the Problems of Legal Support of Circulation in Ukraine", Legal Informatics 1, p. 49.

electronic money issued by the National Bank of Ukraine; introduction of licensing of business entities for receiving electronic money in exchange for cash; developing and adopting a procedure for displaying transactions with electronic money in tax and accounting for e-money issuers – non-bank institutions.

CONCLUSION

The experience of legal regulation of issuance and circulation of electronic money in the EU shows that too stringent requirements for e-money issuers become an obstacle to the further development of their electronic payment system, which means that, in determining the requirements for institutions in the field of electronic money circulation, it is necessary to apply a balanced approach that will ensure the optimal ratio of public-law and private interests of all the participants in the circulation of electronic money.

Legal regulation of the circulation of electronic money in the EU countries at the present stage contains clear and understandable requirements for such a circulation, provides the possibility of functioning of electronic money that already exists in the market, creates legal preconditions for the creation of new types of electronic money in the future, does not prevent the introduction of new technological innovations. The main tendencies in financial and legal regulation of emissions and circulation of electronic money in the EU are: unification of categorical apparatus (the only approach to the definition of electronic money); 2) introduction of a simplified mode of operation of issuers of electronic money (unification of the issuance of licenses and securing the application nature of the use of simplified mode); 3) liberalization of the requirements for issuers of electronic money (permitting non-bank institutions to issue electronic money, reducing the requirements for the minimum authorized capital).

In order to improve the legal regulation of electronic money circulation in Ukraine in accordance with the legal regulation of circulation of electronic money in the EU countries, it is necessary: to expand the circle of emitters of electronic money by assigning non-bank institutions to them; establishment of the obligation to obtain licenses from non-banking institutions for the issue of rights and transactions with electronic money issued by the National Bank of Ukraine; introduction of licensing of business entities for receiving electronic money in exchange for cash / cashless money; development and adoption of a procedure for the display

of transactions with electronic money in tax and accounting for emitters of electronic money – non-bank institutions. In order to improve the legal regulation of electronic money circulation in Ukraine in accordance with legal regulation of circulation of electronic money in the EU countries, it is necessary: to expand the circle of emitters of electronic money by assigning non-bank institutions to them; to establish the obligation to obtain licenses from non-banking institutions for the issue of rights and transactions with electronic money issued by the National Bank of Ukraine; to introduce licensing of business entities for receiving electronic money in exchange for cash.

SUMMARY

The authors study the development of legal regulation of electronic money circulation in Ukraine. Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 “On the taking up, pursuit of and prudential supervision of the business of electronic money institutions”, Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 “On the taking up, pursuit of and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC” are analyzed. The basic aspects of the legal regulation of electronic money circulation in Ukraine are considered. The development of legal regulation of circulation of electronic money in Ukraine is investigated. The directions of an improvement of the national legislation in accordance with European tendencies of the legal regulation of circulation of electronic money are determined.

REFERENCES

1. Agreement on Association between Ukraine, on the One Hand, and the European Union, the European Atomic Energy Community and their Member States, on the other Hand, dated 21.03.2014. URL : http://www.kmu.gov.ua/control/uk/publish/article?art_id=2483876311.
2. Commission Communication of 12 January 1987: “Europe could play an ace: the new payment cards” COM(86) 754 final.
3. Genkin, A.C. 2003, Legal Status of E-money and Electronic Payment Systems, *Business and Banks* 15, 22–34.
4. Commission Recommendation of 8 December 1997 87/598/EEC on a European Code of Conduct relating to electronic payment (Relations

between financial institutions, traders and service establishments, and consumers), Official Journal L 365, 24.12.1997.

5. Annual report 1997, EMI, Frankfurt am Main, 1998.

6. Report on Economic Money, European Central Bank, Frankfurt am Main, August 1998, 47 p.

7. On the taking up, pursuit of and prudential supervision of the business of electronic money institutions : Directive 2000/46/EC of the European Parliament and of the Council of 18.09.2000, Official Journal of the European Communities, L 275/39. 27.10.2000, 39–43.

8. Ranchinsky, K.L. 2011, “Issues of the Legal Status and Regulation of Electronic Money in the EU Countries”, Herald of the RUDN University 1, 69–77.

9. Kuchinskaya, A.R. 2012, “The Legal Nature of Electronic Money”, Mogilev State A. Kuleshov University 2(40), 60–69.

10. Genkin, A.S 2003, “The Legal Status of Electronic Money and Electronic Payment Systems, Business and Banks” 15, 22–34.

11. Vereecken, M.A. 2000, “Single Market for Electronic Money”, Journal of International Banking Regulation, July.

12. Directive 2007/64/EC of the European Parliament and of the Council of November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC

13. Directive 2009/110/EC of the of the European Parliament and of the Council of 16 September 2009 On the taking up, pursuit of and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC), Journal of Financial Services Research, 2009.

14. Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC, URL : <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32007L0064>

15. Aksenov, V.S., Zakharova, N.V. 2010, “The State Regulation of Circulation of Electronic Money in Foreign Countries”, Economic Journal 2, 113–121.

16. The Electronic Money Regulations. URL : <http://www.legislation.gov.uk/ukxi/2011/99/contents/made>

17. About the System of Electronic Money Circulation in Ukraine: Order of the President of Ukraine dated April 30, 1992, No. 79. URL : <http://zakon5.rada.gov.ua/laws/show/ru/79/92-rp>

18. About the Introduction of Electronic Systems for Control and Management of Commodity and Money Circulation: Resolution of the Cabinet of Ministers of Ukraine dated June 11, 1994 No. 390. URL : <http://zakon2.rada.gov.ua/laws/show/390-94-п>

19. The Concept of Electronic Payment system for Goods and Services in Ukraine: Resolution of the National Bank of Ukraine dated 18.07.1994, URL : <http://zakon2.rada.gov.ua/laws/show/753-2006-п>

20. About the Introduction of the National System of Mass Electronic Payments in Ukraine: Resolution of the National Bank of Ukraine No. 24-/611-8439 dated 19.10.99. URL : <http://zakon2.rada.gov.ua/laws/show/v8439500-99>

21. About the National Bank of Ukraine: Law of Ukraine dated May 20, 1999 No. 679-XIV Information from the Verkhovna Rada of Ukraine 1999 № 29. Art. 238.

22. About Banks and Banking: Law of Ukraine dated December 12, 2000 No. 2121-III, Information from the Verkhovna Rada of Ukraine 2001, № 5–6 Art. 30.

23. About the State Regulation of Financial Services Markets: Law of Ukraine dated 12.07.2001 No. 2664-III, Information from the Verkhovna Rada of Ukraine 2002, № 1, Art. 1.

24. Regulation about Electronic Money in Ukraine: Resolution of the National Bank of Ukraine dated 25.06.2008 No. 178. URL: <http://zakon5.rada.gov.ua/laws/show/z0688-08>

25. Senysh, P.M., Kravetz, V.M., Mishchenko, V.I. and others 2008, “World Experience and Prospects of Electronic Money Development in Ukraine”: Scientific and Analytical Materials 10, 145 p.

26. Novitsky, A. 2008, “Electronic money – the Problems of Legal Support of Circulation in Ukraine”, Legal Informatics 1, 49–56.

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