

E-COMMERCE: CONCEPT AND LEGAL REGULATION IN MODERN ECONOMIC CONDITIONS

Aleksy Kwilinski, The London Academy of Science and Business, England
Ruslan Volynets, Taras Shevchenko National University of Kyiv
Inna Berdnik, Chernihiv National University of Technology
Mykhailo Holovko, Chernihiv National University of Technology
Pavlo Berzin, Taras Shevchenko National University of Kyiv

ABSTRACT

The article is dedicated to the study of the essence of the concept of e-commerce and the features of its legal regulation. Based on the study of the views of scientists in the context of the phenomenon under study, the concept of e-commerce and the technological basics of its operation were defined. It was established within the framework of the activities of which bodies at the international level the settlement of legal issues related to e-commerce and the priority directions of such activities are carried out. In particular, attention was paid to regulatory documents in the field of e-commerce regulation of such specialized world organizations as the European Union, the UN Commission on International Trade Law, the UN Economic Commission for Europe and the UN Center for Trade Facilitation and E-business, the World Labor Organization. The analysis of the norms of the current legislation of Ukraine, defining the organizational and legal framework of activities in the field of electronic commerce, establishing the procedure for conducting electronic transactions using information and telecommunication systems was carried out. Given the legislative definition of the concepts of "electronic commerce" and "electronic trade", a distinction was made between them.

Keywords: Electronic Commerce, Electronic Trade, The Internet.

INTRODUCTION

Due to scientific and technological progress, the rapid development of all types of economic activity was the impetus for the emergence of new forms and methods of its implementation. Among the important factors, the implementation of new business methods aimed mainly at meeting the needs of consumers should include the monopolization of sales markets, global competition, and the active development of information technologies. In turn, the development of new business methods is mainly constrained by such factors as the corruption of public relations in the state. In particular, it is noted that corruption offenses of employees of banking institutions entail negative consequences for the economy of each individual country and in general throughout the world (Reznik et al., 2017).

In turn, the emergence of the Internet space (virtual space), which is an electronic interaction environment, has made significant changes in all areas related to the exchange of information. In this context, the system of organization and implementation of entrepreneurial activity is not an exception, because the Internet technologies have opened new opportunities for its implementation. Considering that entrepreneurial activity with the use of information and

communication technologies as compared with the traditional one has its own specific features, it has been called “*electronic commerce (e-commerce)*”.

Problem Statement

The emergence of new opportunities for the implementation of e-commerce was caused by access to the resources of global information networks. Today, the development of e-commerce has a serious impact on the functioning of national markets for goods and services in the context of their integration into the global economic system. Thus, for the leading countries of the world, the problems of international e-commerce began to play a significant role in the system of key priorities of the nationwide level. In turn, the occurrence and rapid development of e-commerce in the sphere of economic relations requires a comprehensive regulatory support of its functioning both in the legislation of individual states and at the international level.

LITERATURE REVIEW

Studying the theoretical and legal basics of e-commerce, the team of authors Poliakh et al. (2017) define e-commerce as a specific part of e-business, including public relations for the sale of goods, services and information *via* the Internet using all the tools available on the network. At the same time, scientists focus on the development and expansion annually e-commerce both in Ukraine and around the world. Thus, it acquires new forms, which is rapidly demanding the adaptation of the manufacturer, consumer and the state: (1) manufacturer-to gain competitive advantages and high-performance tools to promote products/services; (2) consumer-in order to save time, savings when purchasing goods/services with a significant improvement in the quality of service; (3) state-with the aim of ensuring the international integration of commodity-money relations and building an e-government system (Kwilinski et al., 2019).

Malitska & Melnyk (2018) in the study of the features of e-commerce come to the conclusion that it represents any business processes carried out using information technology and the Internet. According to the authors, the main components of e-commerce should include e-trading, e-marketing, e-capital flow, e-money, e-insurance services, e-banking and the like.

According to Khan (2016), electronic commerce, or e-commerce should be considered as the purchase and sale of goods/services *via* the Internet. The scientist notes that in addition to buying and selling, a large number of people use the Internet as a source of information to compare prices or view the latest products offered before making a purchase online or in a regular store.

Shahriari et al. (2015) consider electronic commerce, commonly known as e-commerce, as trading goods or services using computer networks such as the Internet. E-commerce relies on technologies such as mobile commerce, electronic funds transfer, supply chain management, internet marketing, online transaction processing, Electronic Data Interchange (EDI), inventory management systems and automated data collection systems.

Išoraitė & Miniotienė (2018) note that e-commerce is a business in which information technologies are used to increase sales, business efficiency and create a base for new products and services. Due to its activities, each company communicates with many other subjects, which can include both private or corporate clients, and business partners, suppliers.

METHODOLOGY

The study of the concept of e-commerce and its legal regulation in the current economic conditions was conducted using dialectical, comparative legal and formal legal. The dialectical method was used to determine the essence of the concept of e-commerce on the basis of studying the views of scientists in the context of the phenomenon under study. With the help of the comparative legal method, regulatory documents were defined, the provisions of which regulate relations in the field of e-commerce both at the international level and in Ukraine. The formal and legal method allowed us to interpret the provisions of the regulatory legal acts defining the organizational and legal bases of activity in the field of electronic commerce.

FINDINGS AND DISCUSSION

Today, the development of international e-commerce requires the settlement of legal issues that are resolved at the international level in the framework of the activities of not only the European Union, but also other specialized world organizations. These include, in particular: the World Intellectual Property Organization (WIPO), the World Trade Organization (WTO), the UN Commission on International Trade Law (UNCITRAL), the International Chamber of Commerce (ICC), the United Nations Conference on Trade and Development (UNCTAD), the Organization of economic cooperation and development (OECD). One of the priorities of their activities is the creation of an effective legal system for regulating relations in the field of international e-commerce (Kamińska, 2018).

Thus, back in 1992, the UNCITRAL began work on the development of legal rules related to the provision of electronic documents along with paper equivalent status. The result of this activity was the adoption of the Model Law on Electronic Commerce, adopted by the UN General Assembly in 1996. The adoption of the Model Law on Electronic Commerce (MLEC) aimed at securing and facilitating electronic commerce, providing national legislators with a set of internationally acceptable rules aimed at removing legal obstacles and increasing the legal predictability of electronic commerce (UNCITRAL MLEC, 1996). The continuation of the work of the UNCITRAL in the sphere of settling relations in the implementation of electronic commerce has become the preparation of legal norms with the help of which it is possible to ensure the stability of the development of the field of electronic commerce. Thus, the Resolution of the UN General Assembly A/51/628 of 1997 was adopted, according to which States are encouraged to develop legislation to take into account the provisions of the Model Law because of the need to unify legislation applicable to alternative paper forms, methods for transmitting and storing information (Resolution adopted by the General Assembly, 1997; Lakhno et al., 2018).

As a result of the work of the United Nations Economic Commission for Europe and the United Nations Center for Trade Facilitation and E-business, aimed at resolving e-commerce issues at the international level, the following important acts were adopted: (1) the Model Interchange Agreement for the International Commercial Use of Electronic Data Interchange (Annex to Recommendation No.26, COMMERCIAL USE OF INTERCHANGE AGREEMENTS FOR ELECTRONIC DATA INTERCHANGE, 1995); (2) the E-commerce Agreement Recommendation No.31, UN/CEFACT (Electronic Commerce Agreement, 2000).

In the framework of the WTO, the attention to the issue of e-commerce has been given since the late 1990s, which is associated with the adoption in 1998 of the Geneva Ministerial

Declaration on Global Electronic Commerce. In accordance with this Declaration, the E-Commerce Work Program WT/L/274 was developed, which states that, exclusively for the purposes of the work program and without prejudice to its results, the term “*e-commerce*” means production, distribution, marketing, sales or delivery of goods and services by electronic means (WT/L/274, 1998). In the framework of the XI WTO Ministerial Conference, held in December 2017 in the city of Buenos Aires (Argentine Republic), the ministers decided on the Work Program on Electronic Commerce (WT/MIN(17)/65-WT/L/1032, 2017). Being a member of the WTO members, Ukraine actively participates in the development of proposals for the Work Program on Electronic Commerce WT/L/274. In particular, Ukraine joined the document JOB/GC/116 (JOB/GC/116, 2017).

The productive work on the regulatory framework of electronic commerce at the level of the UN is also carried out by the European Union. An important place among the documents adopted by the EU and aimed at regulating e-commerce issues is the Directive 2000/31/EC of the European Parliament and of the Council of June 8, 2000 on certain legal aspects of information society services, in particular electronic commerce in the Internal Market (Directive on electronic commerce). The main objective of this document is to ensure the conditions for the proper functioning of international e-commerce between the EU member states (Directive on Electronic Commerce, 2000).

Studying the legislative regulation of e-commerce in Ukraine, it should be noted that today an important regulatory document is the Law of Ukraine “*On Electronic commerce*” dated September 3, 2015. The said Law defines the organizational and legal framework for activities in the field of e-commerce in Ukraine, establishes the procedure for conducting electronic transactions using information and telecommunication systems, and defines the rights and obligations of participants in relations in the field of e-commerce. It is necessary to emphasize that in paragraph 1 of Part 1 of Art. 3 of the Law the definition of e-commerce is given, by which the legislator understands relations aimed at making profits arising from transactions for the acquisition, change or termination of civil rights and obligations, made remotely using information and telecommunications systems, as a result, participants of such relations have rights and obligations of a property nature “*Law of Ukraine on Electronic commerce*”. It is important to note that paragraph 2 of Part 1 of Art. 3 of the Law also defines e-commerce as an economic activity in the field of e-purchase and sale of goods by remote means to the buyer by means of electronic transactions using information and telecommunication systems “*Law of Ukraine on Electronic commerce*”.

Analysis of the scientific literature allows us to conclude that in many cases, scientists have identified the concept of e-commerce and e-trade, without resorting to the definition of their differences. Given the above rules of the “*Law of Ukraine on Electronic commerce*”, it can be stated that these concepts are not identical. E-commerce is a broader concept and includes e-trade, because the latter does not cover the whole process of commodity-money relations, but only a part related to buying and selling (Tkachenko et al., 2019).

The regulatory acts in the field of e-commerce regulation in Ukraine, in addition to this, also include the Law of Ukraine “*On Consumer Protection, On Electronic Documents and Electronic Document Flow, On Electronic Digital Signature, On Payment Systems and Transfer of Funds in Ukraine, On Financial Services and State Regulation of Financial Services Markets, On Protection of Personal Data, On the Protection of Information Stored in Information and Telecommunication Systems, On Payment Systems and Money Transfer in Ukraine, On Banks*”.

and Banking Activities, On Insurance". Some issues related to the conclusion of an electronic contract are also governed by the norms of the Civil and Economic Codes of Ukraine.

Among the international agreements in the field of e-commerce, for which the consent to be bound is provided by the Verkhovna Rada of Ukraine, it is important to note the Convention on the Protection of Persons in connection with the automated processing of personal data dated January 28, 1981 (ratified on July 6, 2010); the Convention on Cybercrime (ratified 07.09.2005).

CONCLUSION

The rapid development of e-commerce in recent years creates new opportunities for the functioning of the modern international trading system. At the same time, the public relations arising in the field of e-commerce using global information networks require their legal regulation, have the goal of coordinating the behavior of the subjects of such relations and exercising appropriate influence on it.

The consolidation of the principles of state regulation of electronic commerce in the legislation of Ukraine and the further development of its regulatory and legal framework will be effective in terms of bringing current legislation into compliance with the norms of international law. Thus, acting as part of the process of capital movement at the global level, e-commerce is a priority and contributes to the effective development of both the national and international economies.

RECOMMENDATIONS

In recent years, the development of e-commerce has been going on at a fairly fast pace in Ukraine. At the same time, this phenomenon is characterized by the presence and a number of obstacles that have a negative impact on the formation of e-commerce on the national market for goods and services. Overcoming such obstacles is possible by harmonizing Ukrainian legislation with international standards in the field of e-commerce regulation. In particular, the priority directions for the formation of a regulatory legal framework in the field of e-commerce in Ukraine may become increasing the level of transparency; consumer confidence building measures (regulatory framework for consumer protection, privacy, cyber security); trade facilitation measures (resolving electronic payment problems, recognizing electronic signatures, resolving electronic procurement problems, etc.); removing obstacles to the development of international e-business, and the like.

REFERENCES

- Directive on Electronic Commerce. (2000). *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*. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32000L0031>
- Electronic Commerce Agreement. (2000). *Recommendation No. 31 adopted by the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT)*. Retrieved from https://www.unece.org/fileadmin/DAM/cefact/recommendations/rec31/rec31_ecetrd257e.pdf
- Išoraitė, M., & Miniutienė, N. (2018). Electronic commerce: Theory and practice. *Integrated Journal of Business and Economics*, 2(2), 78-93.
- Kamińska, B. (2018). Iterative signal processing in anticipatory management of industrial enterprise development. *Virtual Economics*, 1(1), 53-65.

- Khan, A.G. (2016). Electronic commerce: A study on benefits and challenges in an emerging economy. *Global Journal of Management and Business Research: B Economics and Commerce*, 16(1), 1-25.
- Kwilinski, A., Dalevska, N., Kravchenko, S., Hroznyi, I., & Kovalenko, I. (2019). Formation of the entrepreneurship model of e-business in the context of the introduction of information and communication technologies. *Journal of Entrepreneurship Education*, 22(SI-1), 1-7.
- Lakhno, V., Malyukov, V., Bochulia, T., Hipters, Z., Kwilinski, A., & Tomashevskaya, O. (2018). Model of managing of the procedure of mutual financial investing in information technologies and smart city systems. *International Journal of Civil Engineering and Technology*, 9(8), 1802-1812.
- Malitska, H.H., & Melnyk, O.I. (2018). Features of the electronic commerce and the state of its development in the current economic conditions of Ukraine. *Efektivna Ekonomika*, 12(2), 74-96.
- Poliakh, V., Krivosheeva, N., Klochko V., Sharapova, O., & Chujko, N. (2017). E-commerce: Theoretical and legal basis and the current state of Ukraine. *Scientific Journal*, 5(34), 1010-1017.
- Resolution Adopted by the General Assembly. (1997). *On the report of the sixth committee (A/51/628)*. Retrieved from <http://www.un.org/documents/ga/res/51/ares51-162.html>
- Reznik, O.M., Klochko, A.M., Pakhomov, V.V., & Kosytsia, O.O. (2017). International aspect of legal regulation of corruption offences commission on the example of law enforcement agencies and banking system of Ukraine. *Journal of Advanced Research in Law and Economics*, 8(23), 1-19.
- Shahriari, S., Shahriari, M., & Ggheiji, S. (2015). E-commerce and its impacts on global trend and market. *International Journal of Research-Granthaalayah*, 3(4), 49-55.
- Tkachenko, V., Kwilinski, A., Korystin, O., Svyrydiuk, N., & Tkachenko, I. (2019). Assessment of information technologies influence on financial security of economy. *Journal of Security and Sustainability*, 8(3), 375-385.
- UNCITRAL Model Law on Electronic Commerce. (1996). *With additional article 5 as adopted in 1998*. Retrieved from https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic_commerce

This article was originally published in a Special Issue 2, entitled: "**Business Laws and Legal Rights: Research and Practice**", Edited by **Dr. Svetlana Drobyazko**