

# FINANCIAL AND LEGAL REGULATION OF ELECTRONIC MONEY CIRCULATION IN DEVELOPED COUNTRIES

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## ABSTRACT

*A wide spread of electronic money use in developed countries, both in e-commerce and in the real economy, has necessitated the development of the normative regulation of their circulation in different countries. Despite the fact that the legal nature of the contract of sale has not changed from the way the offer is accepted, either verbally or using electronic devices, the practice of using electronic money has proven that legal instruments that have been established earlier and effectively regulate traditional legal relations in many cases are not suitable for the effective settlement of financial relations, implemented with the help of modern technological devices. The absence of legislative regulations that would allow taking into account the specifics of using electronic money led to serious legal problems that increased in proportion to the development of electronic money. The development of financial and legal regulation of the circulation of electronic money in developed countries was determined by the needs of: creating of conditions for increasing the efficiency of the state credit system; establishment of supervision over issue and circulation of electronic money; maintaining the stability of the national payment system as a whole, its quality and reliability improvement; providing participants of the electronic money turnover with maximum protection; creating conditions for the taxation of electronic money transactions; preventing the movement of funds used in illegal transactions; stimulating the development of economic activity in the financial market of innovative technologies.*

**Keywords:** Electronic Money, The Legal Nature of the Contract of Sale, Issue, State-Credit System, Information Technology

## INTRODUCTION

Over the past decades, nothing has evolved as rapidly as computer and electronic communications. The Internet and other information technologies are widely used in economic relations and in the sphere of money circulation, as a result of which electronic money has become widespread. Electronic money is issued and circulated on the global Internet, the number of users of which is constantly growing, which will inevitably lead to an increase in the volume of electronic commerce, including international. It is electronic money that can be used to ensure

the turnover in international commerce, which will make it possible to use such money in any state in the future.

Despite the short history of the existence of electronic money, its financial and legal nature served as a subject of active discussion in scientific circles, was widely spread in legal literature, and the legal foundations of electronic money circulation were consolidated in the legislation and regulations of many countries around the world governing the activities of individual banks. Despite this, as a result of the versatility of the electronic money phenomenon, a unified scientific position on the definition of the financial and legal nature of electronic money has not yet been formed, which significantly complicates the regulation of money circulation (since electronic money is subject to such regulation).

## REVIEW OF PREVIOUS STUDIES

Recently, in science, the problem of electronic money definition in modern money theory has also been given attention, but a unified approach to its solution has not been formed. Some scientists (Hilorme et al., 2019) believe that electronic money is a new form of money, since it has all the properties of cash (turnover, lack of direct connection with a bank account, lack of clearing, flexibility, durability, etc.). Other scientists (Drobyazko et al., 2019) insist that electronic money is a means of payment, since it allows payment transactions to be carried out without requiring mandatory access to deposit accounts and participation of the issuer. Still others (Berentsen & Schar, 2018) argue that electronic money is a type of deposit money, because money is transferred to bank accounts automatically using computer systems by direct order of current account holders. According to many scientists, it is electronic money that will become the only world money in the future (Enyi & Le, 2017).

Thus, at the present stage, in the conditions of abandoning the gold standard, intensification of globalization and integration of the world economy, development of information and computer technologies, electronic money is able to perform all the functions of money, so it can be defined as a new, evolutionary form of money which was formed as a result of the loss of intrinsic value and the development of cashless payments, by combining financial and technical tools, as a transition in the informational stage of money development from analog to digital form.

Particular attention should be paid to the position of Hedley (2017), who notes that from a legal point of view, electronic money represents the obligations of the issuing bank, which corresponds to the right to claim the holder of such electronic money for their repayment (exchange for cash and non-cash money). The same position is shared by Hewitt & Carlson, (2019), who note that the peculiarities of electronic money include the fact that it represents a monetary obligation of the issuer. Indeed, in recent times, an increasing number of electronic money systems are being formed by analogy with electronic systems of deposit funds, with the difference that in the first case, cash is recorded in the issuer's virtual accounts, and in the second-in bank accounts (Kakavand et al., 2017). Thus, electronic money as the issuer's obligations is also one of its features.

Summing up, we can state that electronic money: (1) by its physical nature is a specialized electronic launch (file), which is recorded on a carrier (computer hard disk or smart card), contains a money characteristic and a quantitative expression of the value of a monetary equivalent, is stored on an electronic device and can circulate in this form as a payment with

appropriate legal consequences, including with persons other than the issuer; (2) is a prepaid financial product that is issued after the issuer receives money in an amount not less than the value of the cash equivalent (is issued after receiving funds in the amount not less than this value) and does not require the use of bank accounts in the transaction; (3) is the obligations of the issuer, which corresponds to the right of claim to the owner of such electronic money to repay.

## METHODOLOGY

The methodological basis of the study consists of the provisions of dialectics as a general scientific method of cognition of the phenomena of objective reality, other general scientific and special methods, namely: formal and logical, historical and legal, system analysis, comparative, statistical, the use of which makes it possible to investigate problems in the unity of their social content and meaning. The use of the historical and legal method contributed to the study of the genesis of scientific research on the development of money and electronic money, EU legislation on the circulation of electronic money. The use of a formal and logical method made it possible to determine the main directions for improving the legislation on the legal regulation of electronic money circulation.

## RESULTS AND DISCUSSION

The rapid development of information technology has contributed, above all, to an increase in the volume of e-commerce, in which electronic money was widely used. Over time, it became clear that the circulation of electronic money cannot be stopped, since the practice has shown that electronic money is better than plastic cards and other forms of money, since it is more convenient to use them not only in the Internet space, but also in the real economy, therefore, the government of several countries faced the issue of regulatory regulation of the circulation of electronic money.

It seems that a qualitative evolution in public relations did not happen-the legal nature of the contract of sale did not change from the way the offer is accepted-verbally or with the help of electronic devices; however the practice of using electronic money has proved that legal instruments that have been established earlier and effectively regulate traditional legal relations are in many cases unsuitable for an effective settlement of financial relations implemented with the help of modern technological devices.

The countries with a developed economy felt this problem especially acutely, since e-commerce was actively developed and used in them. The absence of legislative regulations that would allow taking into account the specifics of using electronic money led to serious legal problems that increased in proportion to the development of electronic money. That is why in many countries financial and legal regulation of the issue and circulation of electronic money began to develop in order to eliminate legal gaps in the circulation of electronic money.

The countries of the Asian region were among the first to resort to financial and legal regulation of the circulation of electronic money. In these countries, two approaches to this issue have emerged: In some countries of the Asian region, electronic money is defined as a special object of civil rights, called electronic money, preserved value, or other concepts aimed at describing these legal relations (Japan, Singapore, China and Taiwan), and in others-the definition of electronic money consists in approaching the specified legal relations without

identifying any particular object of rights, when electronic money qualifies by analogy with an agency agreement, when the operator is defined as the payer operator in making a payment (Korea). In addition, in the countries of the Asian region there is a different approach to the definition of e-money issuers. In some countries, the right to issue electronic money belongs exclusively to banks and credit companies (Korea, China and Taiwan), and in others-the right to issue electronic money belongs not only to banks, but also to others who have received a corresponding license to issue electronic money (Japan), and in still others-the right to issue such money belongs exclusively to the state (Singapore). A comparison of the norms of Directive 2000/46/EC with the norms of Directive 2009/110/EC allows us to state that the main changes that were made to the legal regulation of electronic money circulation in the territory of the EU countries were: reduction of the requirement for the authorized capital of institutions that issue electronic money, from 1 million euros to 350 thousand; capital requirements were replaced with new settlement requirements, taking into account the nature of the activities of institutions issuing electronic money and the risk structure; the activities carried out by institutions that issue electronic money are expanded (except for issuing electronic money and services directly related to issuing electronic money, it is possible to provide payment services, to issue loans within payment services (provided that they are not issued from funds raised in exchange for electronic money), to operate payment systems, etc.); the right of users to return money free of charge at any time was assigned, subject to full refund of electronic money; it was provided that the issuer of electronic money is able to charge commissions in accordance with the cost of the operation if the issuer has provided it in the agreement with the user. Thus, the formation of financial and legal regulation of the circulation of electronic money in the EU countries was carried out in the following stages:

1. 1994-1999-The general concept of electronic money was formed, which provided for the need to establish a monopoly of banks and other credit organizations for the issuance and circulation of electronic money; preparation of a theoretical framework for the development and adoption of relevant legislation;
2. 2000-2008-The norms of Directive 2000/46/EC, which regulated the issuance and circulation of electronic money, standardized the concept of electronic money as a “*value that is preserved*” and was a special kind of civil (material) rights; requirements for institutions in the field of electronic money circulation were established (licensing procedure, obtaining a euro passport, requirements for the amount of the minimum capital, minimum and permanent own funds and limiting the technical means for storing and recording electronic money); the procedure for prudential supervision and the principles of national control to prevent the use of the financial system for the purpose of money laundering were consolidated; the procedure for cashing electronic money was determined;
3. 2009-Present days-the norms of Directive 2009/110/EC, which expanded the range of organizations that meet the definition of “*institutions in the field of electronic money circulation*”, by assigning to them non-banking institutions that were granted the right to issue electronic money on a non-professional basis, to provide financial and non-financial services directly related to the issuance of electronic money, that is, the monopoly of banks and other credit institutions to issue electronic money has been abolished; reduce in the level of requirements for institutions in the field of electronic money circulation; the activities carried out by institutions that issue electronic money (the ability to provide payment services, issue loans within payment services, operate payment systems, etc.) were expanded.

The experience of financial and legal regulation of the issue and circulation of electronic money in the EU shows that too strict methods of financial and legal regulation, which establish the requirements for issuers of electronic money, become an obstacle to the further development of the entire electronic payment system, as a result the sphere of electronic money circulation

requires a balanced approach that takes into account both public law and private interests of all participants in the circulation of electronic money.

The norms of Directive 2009/110/EC, as well as the norms of Directive 2000/46/EC, were also subject to mandatory implementation in the national legislation of the countries of the EU in April 2011, but according to the decision of the national authorities of the countries, a number of the provisions of Directive 2009/110/EC could not be implemented in the national laws of the EU countries. Thus, the provisions of the above Directive were applied to organizations that formally engaged in the issuance of electronic money, the nominal value of which did not exceed 6 million euros; in cases when previously issued electronic money was taken in advance by a limited number of enterprises; in the case of a clear geographical location of the issuer; in the presence of the contractual relationships of the issuer with companies that accepted electronic money.

### RECOMMENDATIONS

At the present stage in the world, an approach has been formed, according to which it is recommended to introduce in developed countries in addition to the main methods of financial and legal regulation of electronic money circulation: (1) state registration and licensing of e-money issuers; (2) establishment of the requirements for the amount of the minimum capital, the amount of the minimum and permanent own funds and the limitation of technical means intended for the storage and accounting of electronic money, the formation of reserves by issuers of electronic money; (3) establishment of the prudential supervision and control over the activities of participants in transactions using electronic money; (4) establishment of the responsibility for violation of financial legislation on the issue and circulation of electronic money.

### CONCLUSION

Summing up, we can state that in the world there are two models of financial and legal regulation of the circulation of electronic money, which differ depending on the definition of electronic money. In some countries, e-money is treated as a special object of civil rights (money in a special form), and its definition is formulated with the help of the notion “*value that is preserved*” (Japan, Singapore, China, Taiwan, the United States at the federal level, Kazakhstan, Russia, Belarus, etc.). In these countries, the financial and legal regulation of electronic money circulation is of a regulatory nature and is characterized by the presence of statutory requirements for e-money issuers, their licensing, the amount of minimum capital, the amount of minimum and permanent own funds and limiting of technical means intended for storing and accounting for electronic money, etc.

In other countries, electronic money is defined as a medium of exchange, whether it is not repaid with money and stored electronically (Korea, some US states and Australia). In these countries, the financial and legal regulation of electronic money circulation is advisory in nature and includes prudential supervision of issuers of electronic money, supervision of issuers accounts, agents of operations using electronic money, monitoring of the compliance with the requirements for the disclosure of information on transactions by them using electronic money, etc.

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