

ADAPTATION OF UKRAINE'S LEGISLATION ON E-COMMERCE TO INTERNATIONAL STANDARDS

Oksana Telychko

Associate Professor, PhD, Kryvyi Rih Economic Institute of Kyiv National Economic University named after Vadym Hetman,

e-mail: oksana.telichko@ukr.net, orcid: orcid.org/0000-0003-1479-0720, Ukraine

Kateryna Datsko

Associate Professor, PhD, Kryvyi Rih Economic Institute of Kyiv National Economic University named after Vadym Hetman,

e-mail: datsko_kp@kneu.dp.ua, orcid.org/0000-0002-8617-6925, Ukraine

Viktor Rekun

Associate Professor, PhD, Kryvyi Rih Economic Institute of Kyiv National Economic University named after Vadym Hetman,

e-mail: rekun_va@kneu.dp.ua, orcid.org/0000-0002-0126-3852 Ukraine

Abstract. The article explores the legal content of the concept of e-commerce as a special area of legal relations which arose in the conditions of globalization of economic and technological processes. The main factors and trends of development of this type of economic legal relations both in Ukraine and in the world are characterized. The authors identify the peculiarities of Ukrainian legislation and international standards concerning legal mechanisms of regulation of e-commerce and outline the ways of adaptation of Ukrainian legislation in order to overcome the uncertainty and promote the observance of norms of consumer rights.

Keywords: e-commerce, international standards, adaptation, EU law.

DOI: <http://dx.doi.org/10.23856/2808>

Introduction

The dynamics of technology development and business aspects calls forth changes and new approaches in the development of e-commerce which opens free access for consumers to products on the world market. The results of 2017 show that global online sales grew by 17-18%. The proposed topic gains in significance due to the fact that in Ukraine it was only in 2015 that the regulatory framework was provided for electronic commerce, while the rapid development of the latest technologies opens up new business opportunities, which requires changes and revisions of legal framework in order to adapt it to international standards. The need for the research is determined by the fact that the legal uncertainty of the mentioned relations leads to insecurity of their subjects, and insufficient legal regulation creates the so-called "legal vacuum".

The features inherent to electronic commerce

The development of electronic communications has led to the emergence of business realtions carried out through electronic networks. E-commerce as the sphere of legal relations is becoming increasingly important as it comprises relations arising when entering into, changing or terminating civil rights and obligations carried out remotely with the use of information and telecommunication systems.

According to official statistics, in 2017, China and Japan (US \$ 761.56 billion) and the United States (US \$ 349.06 billion) are e-commerce sales leaders. Taking into account the development of information technologies, in 2017, e-commerce trends include mobile shopping, multi-channel marketing, content usage to increase sales volumes, customer data analysis using algorithms, improved delivery methods, and post-payment options.

The results of 2017 show that Ukraine is one of the leaders in rate of Internet-sales growth (35%) compared to other European countries. There is a steady increase in demand for Ukrainian goods.

A comprehensive understanding of the legal issues and needs of improved legal mechanism for trade process through e-commerce can be facilitated by identification of the features inherent to electronic commerce:

- 1) presence of the environment for transactions: the environment for transactions and provision of banking services is a telecommunication network;
- 2) integrity of the concept: e-commerce involves relations in the field of electronic document circulation, conclusion of transactions via telecommunication networks, electronic signatures use;
- 3) free approach to choosing a payment method in the process of trading by e-commerce;
- 4) the legislation does not impose any restrictions on the subject or on the type of transactions conducted with the use of telecommunication networks.

What should be noted is that today's high rates of e-commerce use are due to a number of economic, social and technological factors, in particular, the economy globalization, the Internet multifunctionality, the availability and efficiency of e-commerce, increased competitiveness (as a result of improved service quality, cost savings, price reductions), creating new business opportunities, etc.

The legal mechanism for e-commerce

The legal mechanism for e-commerce regulation is implemented at three levels of legislative regulation: international; regional (within European countries); national. Let's consider in detail each of the levels of regulation of e-commerce relations (Table 1).

In Ukraine, electronic commerce is regulated by a number of legal acts of both general and special nature. In particular, the provisions on this group of relations are partly contained in the Civil and Commercial Codes of Ukraine, the Laws "On Consumer Rights Protection", "On Advertising", "On Electronic Documents and Electronic Document Workflow", "On Information Protection in Information and Telecommunication Systems", "On Telecommunications", "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" and others.

A special act regulating this area of trade is the Law of Ukraine "On Electronic Commerce" of September 3, 2015. The legal norms of the law regulate the relations arising in the course of distance contracting and conducting transactions on sale or supply of goods, execution of works and provision of services, as well as related legal actions with the use of electronic information and communication facilities and technologies that form the sphere of e-commerce.

Table 1

Levels of legislative regulation of electronic commerce

Level of legislative regulation	Regulatory document	Key provisions
International	UNCITRAL Model Law on Electronic Commerce	The law is of a recommendatory nature. It defines the main directions of legal regulation of e-commerce and is the basis for the development of national legislation.
Regional	EU Directive of June 8, 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market	Outlines the conditions for the proper e-commerce conduction between EU member states. The directive sets up the legal regulation of a wide range of social relations in the area of e-commerce
National	General documents	
	The Constitution of Ukraine	Provides for the the right to conduct entrepreneurial activities
	The Economic Code of Ukraine	Determines the procedures of interaction between an entrepreneur and a consumer
	The Tax Code of Ukraine	Specifies the requirements for taxation of enterprises engaged in e-commerce and restrictions of the simplified taxation system application
	The Civil Code of Ukraine	Identifies the basic principles of online-stores organization
	The Criminal Code of Ukraine	Defines the types of crimes that can be committed on the electronic network
	Special documents	
	Law of Ukraine "On Consumer Rights Protection", "On Advertising", "On Electronic Documents and Electronic Document Workflow", "On Information Protection in Information and Telecommunication Systems", "On Telecommunications", "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"	Determine the special norms and regulations for e-commerce conduct in terms of organization of activities, electronic document circulation, protection of information and personal data and peculiarities of relations with consumers.

The provisions of the mentioned law do not apply to treaties which are provided by a special procedure of transfer of ownership; treaties to be entered into with the participation of the state authorities; transactions requiring notarization or state registration, representation of a person in a court; acts involving operations with monetary rates in gambling, including lotteries and pairs, as well as transactions in the field of inheritance and family law.

At international level, there are several legislative acts regulating the sphere of Internet commerce, but they are framework laws, e.i. they determine the main directions of legal regulation of this area.

Significant attention should be paid to the statement of O. Vorobiova that the effective legal regulation is ensured by the development of common norms concerning electronic activity (electronic document circulation and electronic signature, procedure of electronic messaging, determination of time and place of message sending and receiving, identification of message sender and recipient, providing security of electronic message exchange, regulation of issues of tax, customs and currency legislation, etc.) (Vorobiova, 2012).

The regulation of e-commerce should be based (considering its specifics), first of all, on the norms governing communication and information exchange. However, the unified system of regulation of electronic information transfer has not yet been formed within international law.

In general, lawmaking activities of international organizations in the field of e-commerce are directed, first of all, to:

- providing electronic documents with the status of ordinary documents;
- regulation of cryptographic protection of data;
- prevention of illegal distribution of personal data of e-commerce participants;
- regulation of relations with state bodies in matters of taxation;
- protection of consumer rights;
- protection of intellectual property rights, etc.

The aforementioned levels of legal regulation illustrate a large number of legislative acts in the field of e-commerce, which requires unification of norms by special international organizations and international organizations of general competence: within the EU, the UN (International Institute for the Unification of Private Law UNIDROIT), the World Intellectual Property Organization, the International Chamber of Commerce, the United Nations Economic Commission for Europe, the United Nations Center for Trade Facilitation and Electronic Business, the World Trade Organization.

The first step in development of international law on e-commerce regulation was the Model Law on Electronic Commerce (the so-called UNCITRAL Model Law) adopted by the UN General Assembly Resolution on January 30, 1997. The document is of a framework, recommendatory character and is intended, first of all, to be used by states as the basis for the development of national legislation.

The Model Law established the legal basis for activities in the sphere of e-commerce; delineated basic concepts such as electronic document, electronic document flow, electronic signature, author of electronic document, information system; endowed electronic documents with legal and evidential effect; specified the requirements for electronic signature as a means of confirming the authenticity and integrity of the electronic document.

The law applies to any kind of information in the form of a data message used in the context of commercial activities. The term “data message” means information generated, sent, received or stored by electronic, optical or similar means including electronic data interchange, electronic mail, telegram, telex or telecopy.

Among acts of international private law on e-commerce we should mention the Recommendations proposed by The Hague Conference on Private International Law in 1999. The Recommendations can be considered as the basis for the development of rules for regulation of Internet commerce including the following key provisions:

1) instead of creating new rules for the regulation of e-commerce, existing rules, principles and procedures should be applied, by appropriate interpretation, including the use of functional equivalents;

2) for online contracts in matters of jurisdiction and applicable law, if the relevant obligation is carried out offline (outside of the Internet), the existing rules of private international law remain in force;

3) electronic transactions in matters of applicable law and jurisdiction should be implemented considering the autonomy of the will of the parties as the guiding principle (*Recommendations of the Hague Conference on private international law, 1999*).

In 2001, the UNCITRAL Model Law on Electronic Signatures was adopted. Its provisions apply to cases where electronic signatures are used in the context of commerce activities. It is designed to aid states in establishing a unified legislation base governing the functions of signature in the electronic environment.

The UN General Assembly adopted the Convention on the Use of Electronic Communications in International Contracts on November 23, 2005, which entered into force on March 1, 2013. The Convention aims at facilitating the use of electronic communications in international trade by assuring that contracts concluded and other communications exchanged electronically are as valid and enforceable as their traditional paper-based equivalents.

The Convention describes the following issues:

1) determination of the location of the parties in the conclusion of contracts using electronic means;

2) the time and place of dispatch and receipt of electronic communications;

3) the use of automated message systems for the conclusion of a contract;

4) the criteria to be used to establish the functional equivalence between electronic communications and paper documents (including “primary” paper documents), as well as between electronic authentication methods and handwritten signatures.

The Convention has become the most important means to fill the gaps in the legal regulation of e-commerce (*Haidulin, 2014*). The Articles 8, 9 of the Convention provide for requirements for electronic communications to gain legal force. In particular, it is stated that information “shall not be denied validity or enforceability on the sole ground that it is in the form of an electronic communication” (Article 8, Paragraph 1), namely, an electronic message is equivalent to a written form (Article 9, Paragraph 2) (*The UN Convention on the use of electronic communications in international contracts, 2005*).

The accedence to the Convention doesn’t involve any financial consequences, and its application on the national level doesn’t require any special body and compulsory reporting, but Ukraine hasn’t ratified it.

Along with the rule-making activities of the UN in the formation of international law in the field of electronic commerce, the European Union also takes an active part in this process. In 1998, the EU adopted the Directive “On certain legal aspects of electronic commerce in the internal market”. The main objective of this Directive is to ensure the conditions for the proper functioning of international e-commerce between EU member states. The Directive defines the legal regulation of a large range of social relations in the area of e-commerce. In

addition to the general provisions, this document contains a set of rules that more thoroughly regulate particular aspects of e-commerce.

Another important document shaping European law in the area of e-commerce is the EU Directive “On a Community framework for electronic signatures” adopted in December, 1999. The purpose of the adoption of this legislative act is to ensure the conduct of business through the Internet.

In general, we can conclude that the European Union has developed a specific model of the international legal regulation of e-commerce which combines norms of international law as an integral part of the EU law, supranational law compulsory for all countries of the EU, and national law of the EU member states. It should be noted that the rules of supranational law relating to e-commerce are not be in conflict with the norms of international law (*Vorobiova, 2012*).

The Council of Europe, as an intergovernmental organization, has also adopted a number of documents in the area of e-commerce regulation, in particular:

- 1) Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of January 28, 1981;
- 2) Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder dataflows of November 08, 2001;
- 3) Convention on Information and Legal Co-operation concerning the “Information Society Services” of October 4, 2001;
- 4) Convention of the Council of Europe on Cybercrime of December 23, 2001, etc.

The United Nations Economic Commission for Europe and the United Nations Center for Trade and Electronic Commerce adopted a The Model Interchange Agreement for the International Commercial Use of Electronic Data Interchange (Annex to Recommendation №26 “Commercial Use of Exchange Transactions in Electronic Data Interchange” adopted by the Working Party on the Promotion of International Trade Procedures of the European Economic UN Commission dated by 23.06.1995); E-Commerce Agreement (*Recommendation № 31 adopted by the UN Centre for Trade Facilitation and E-Business (UN/CEFACT), March 2000, Geneva*).

Currently, it can be argued that there is a well-developed at the international level basic principle of the Internet commerce – the parties who have entered into an electronic agreement can not question it only because it is concluded or executed electronically and is not based on traditional paper document circulation, accompanied by a traditional handwritten signature. The doctrine emphasizes that a legal custom has already been formed, according to which the credit card number is used as a signature when making repaid contracts, and in the relationship between permanent partners an electronic-digital signature is used.

The rules governing the identification process of a person who issues an electronic document (laws dealing with the regulation of electronic signatures) are mostly national.

Along with international law, the national legislation of particular countries is being actively developed. There are various laws regulating the Internet activities adopted. Especially successful in this area is work in the USA where the first e-commerce systems appeared in the 60’s of the 20th century.

The American Bar Association has developed a Model Agreement on electronic data exchange between trading partners. The United States has the Federal Law “Electronic Signature in Global and National Commerce” in 2000.

We should also mention that the United States adopted the basics of global e-commerce which embrace the main ways of regulating relations in the area of e-commerce:

- the transformation of the Internet into the market-driven environment for communication and the exchange of goods and services;
- promotion of electronic payment systems development;
- creation of uniform standards of commercial rules;
- protection of intellectual property in the Network;
- personalization of information;
- promotion of development of web services to support e-commerce;
- promotion of fair competition and desire to interact for national telecommunication systems;
- confronting non-tariff barriers to trade on the Internet, etc.

Canada has developed the State Strategy with its main provisions reduced to formulation of problems and determination of actions aimed at their solution:

1) ensuring social confidence in the “digital” economy: the partner dialogue between the government and the private sector should be oriented on issues of guaranteeing the security of electronic transactions, cryptography, protection of private information and consumer interests;

2) regulation of certain problems:

- development of general flexible legal framework and trade regime;
- adaptation of legislation in the sphere of tariffs and taxation;
- ensuring the protection of intellectual property rights for electronic products;

3) improvement of information infrastructure:

- creation of new high-speed communication lines;
- providing fair access to networks and maintaining a competitive environment;
- developing open standards and ensuring interoperability of the network environment;

4) promotion of e-commerce: work at the national level on e-literacy of the population

(*Melnichuk, 2014*).

The UK saw the rise of e-commerce around the same period as in the United States. However, in this country, the main area of application of e-commerce was not transport, but trade.

The role of state in the formation of information infrastructure and the development of e-commerce is also demonstrated by the examples of the Czech Republic, Poland, Hungary, Singapore, the Baltic States. In these states, business information support is one of the most important components of the transformation of economic policy aimed at the development of competition. The essence of the process is the formation of an organic connection of the national information infrastructure with the economy of the country.

Thus it can be assumed at the international level, the legal basis of the Internet commerce is in the stage of formation. It is basically limited to model framework laws that indicate the direction of developing legal regulation, rather than establish binding legal norms. Unfortunately, Ukraine has not ratified important international legal acts in the area of e-commerce, but their provisions are taken into account in the process of drafting and adopting national legislation.

According to a neat statement of N. Blazhivska, in the context of the strategy of Ukraine’s integration into Europe, the development of its normative and legislative framework should be run with maximum consideration of the relevant European Union Directives adopted for the formation of general rules of the Internet and electronic commerce

development. These documents, along with the relevant regulations of the United Nations, the International Monetary Fund, the World Trade Organization, the European Central Bank and the developed countries, should be considered as a strategic and methodological basis for the development of a national regulatory framework (*Blazhivska, 2013*).

Today we are about to enter the world with no boundaries for technology where more and more place in the unified global economic space is being taken by business activities in key areas such as telecommunications, financial services, information technology, e-commerce.

The activities of economic agents in the area of e-commerce must comply with the requirements of the legislation on the protection of personal data. Since special issues related to the protection of personal data in course of e-commerce is not yet reflected in the Ukrainian legislation the general provisions of the law on the protection of personal data are applied in the area of e-commerce. Particularly, as mentioned in the Article 14 of the Law “On e-commerce” the Law of Ukraine “On Personal Data Protection” is in force (*On electronic commerce, 2015*).

In the sphere of international legal regulation of personal data protection, the important international agreement on the protection of freedom, security and human rights on the Internet is the Budapest Convention on Cybercrime developed by the Council of Europe in 2001 and ratified by the Verkhovna Rada of Ukraine in 2005. According to the Convention, any unauthorized access, interception or interference with computer data should be considered illegal. The computer data, according to the Convention, is referred to as personal data of individuals or confidential data of legal entities placed on computer networks.

The Convention divides offences in the area of cyberspace into groups. First of them entitled “Offences against the confidentiality, integrity and availability of computer data and systems” includes illegal access, illegal interception, data interference, system interference and misuse of devices. The other groups are “Computer-related offenses” (computer-related forgery and computer-related fraud) and “Content-related offences” (Offences related to child pornography). The Convention also provides for offenses related to infringements of copyright and related rights (*Budapest Convention on cybercrime, 2001*).

Another important document is the Resolution of the Parliamentary Assembly of the Council of Europe on privacy and personal data protection on the Internet in 2011 which sets out the following general principles for the protection of privacy in the use of information and communication technologies:

- the protection of private life or privacy is a necessary element of human life and the humane functioning of a democratic society; where the privacy of a person is violated, his or her human dignity, liberty and security are at stake;
- the right to protection of privacy and personal data is a fundamental human right, which imposes on states the obligation to provide an adequate legal framework for such protection against interference by public authorities as well as private individuals and entities;
- individuals shall be able to control the use of their personal data by others, such use including any accessing, collection, storage, disclosure, manipulation, exploitation or other processing of personal data (*Resolution of the Parliamentary Assembly of the Council of Europe on privacy and personal data protection on the Internet, 2011*).

In 2000, the European Parliament and the Council of the EU adopted a Directive on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (E-commerce Directive) aimed to approximate particular national legal acts to the established uniform requirements to realtions actors involved in the provision of

information services in the EU internal market; requirements to service providers; requirements for the means of commercial communication (electronic means, communication facilities, etc.) that are used in this area; general requirements for the liability of mediators and provisions for the development of codes of conduct. Moreover, the Directive contains key provisions for the organization of cooperation between the EU member states in the area of e-commerce (*Directive on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, 2000*).

In 2010, Ukraine ratified the Convention the Council of Europe for the Protection of Individuals with Regard to Automatic Processing of Personal Data of January 28, 1981, designed to secure for every individual, whatever his nationality or residence, respect for his rights and fundamental freedoms, and in particular his right to privacy, with regard to automatic processing of personal data relating to him (*Convention the Council of Europe for the protection of individuals with regard to automatic processing of personal data, 1981*).

Conclusions and suggestions

E-commerce is a regular process of information technologies development, a factor in the growth of the turnover of capital both domestic and worldwide which requires constant monitoring of legal norms and provisions and their adaptation to international standards. The considered list of international normative acts provides a general idea of the peculiarities of domestic and world legal support for e-commerce. In the context of the mentioned problems, more detailed elaboration and improvement of legal norms is required for the issues of tax and trade law, intellectual property rights, as well as issues of legal regulation and control of customs payments, etc.

References

- Blazhivska, N. E. (2013). *Electronic transaction in e-commerce. Scientific Bulletin of Uzhgorod National University, 164-168. [in Ukrainian]*.
- Budapest Convention on cybercrime: International document of November 23, 2001. [Electronic resource]. Retrieved from: http://zakon3.rada.gov.ua/laws/show/994_575. [in Ukrainian]*.
- Convention of the Council of Europe for the protection of individuals with regard to automatic processing of personal data: International document of January 28, 1981. [Electronic resource]. Retrieved from: http://zakon1.rada.gov.ua/laws/show/994_326. [in Ukrainian]*.
- Declaration on global electronic commerce, Second Session, WT/MIN(98)/DEC/2, adopted on 20 May 1998. [Electronic resource]. Retrieved from: http://www.wto.org/english/tratop_e/ecom_e/mindec1_e.htm. [in English]*.
- Directive 2000/31/EC of the European Parliament and of the Council on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce): International document of 8 June 2000. Official Journal, 178, 0001 – 0016. [Electronic resource]. Retrieved from: <http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0031:EN:HTML>. [in English]*.
- Directive 2005/29/EC of the European Parliament and of the Council of May 11, 2005 concerning unfair business-to-consumer commercial practices in the internal market and*

amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive'). *Official Journal*, 149, 0022 – 0039. [in English].

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 Text with EEA relevance, *Official Journal*, 319, 0001 – 0036. [in English].

Directive 97/7/EC of the European Parliament and of the Council on the protection of consumers in respect of distance contracts: Intenational document of May 20, 1997. *Official Journal*, 144, 0019 – 0027. [Electronic resource]. Retrieved from: <http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX :31997L0007:EN:HTML>. [in English].

Haidulin, O. O. (2014). International legal principles of the Institute of electronic contracts. *Legal Science*, 12/2014, 177-182. [in Ukrainian].

Melnichuk, O. S., (2014). Global trends in e-commerce development. *Scientific Papers of Scientific-research financial institute*, 1 (66), 58-69. [in Ukrainian].

Privacy and personal data protection on the Internet of 2011. (23.02.2012). Resolution of the Parliamentary Assembly of the Council of Europe, no. 1843. [Electronic resource]. Retrieved from: <http://www.khpg.org/index.php?id=1329990005>. [in English].

Recommendations of the Hague Conference on private international law. (1999). [Electronic resource]. Retrieved from: http://cuiwww.unige.ch/~billard/ipilec/intro_uk.htm. [in English].

The Law of Ukraine "On electronic commerce», 03.09.2015, no. 675-VIII. [Electronic resource]. Retrieved from: <http://zakon2.rada.gov.ua/laws/show/675-19>. [in Ukrainian].

The UN Convention on the use of electronic communications in international contracts. (November 23, 2005). International document [Electronic resource]. Retrieved from: zakon3.rada.gov.ua/laws/show/995_e71. [in Ukrainian].

Vorobiova, O. (2012). Legislative regulation of e-commerce: international experience. *Efficiency of public administration*, 30, 269-275. [in Ukrainian].