

N. Kyreieva,

Postgraduate Student at the Department of Economic Law and Procedure
National University "Odesa Law Academy"

FOREIGN EXPERIENCE OF ECONOMIC-LEGAL REGULATION OF ELECTRONIC FINANCIAL SERVICES

The usage of electronic systems in the processing and transmission of information has become universal and general. Such systems are used in many areas, and the financial services market, especially banking, is not an exception. Therefore, the e-commerce is actively developing all over the world.

Modern information technologies allow coordinate the activities of financial institutions, expand and establish new relationships between such institutions, for example, interbank ones. They help financial institutions operate at the financial services markets of a number of countries and at the international level. The automation of financial transactions, application of information technologies by banks and other financial institutions allow to solve complex problems of development and creation of regional, interregional and international financial and banking systems.

The mechanization of the activity of financial institutions contributes to the solution of strategic tasks and has a significant positive influence. The main goals of the introduction of information technologies at the financial services market are reducing of costs and increasing the quality of services. The issues of creation of efficient services providing system and the decrease of prices by means of the direct delivery of financial services without mediation are sharpened. Therefore, the direct service with the use of the latest technologies, especially the Internet, is increasingly being used. That is why electronic financial services sometimes are called "direct financial services".

The North America dominates in the development of modern Internet technologies (65.3% of all Internet addresses), the

Western Europe takes the second place (22.4%), followed by Australia, Japan and New Zealand (6.4%). Thus, the rest of the world accounts less than 6% of all Internet address. However, researches suggest that almost half of companies from such countries as China, Mexico, South Africa, Colombia, Jordan and other ones are also actively using the Internet in their activities and are involved in e-commerce [1, p. 56]. Therefore, our state should not stay away from this process.

The above-mentioned tendencies caused the necessity to improve the economic-legal regulation of electronic financial services. The developed countries successfully find the ways to improve their current legislation. The adoption of the experience of such countries and their legal mechanisms that are approbated at practice will help to improve the economic-legal regulation of the electronic financial services market in Ukraine and will promote its further progressive development. But all the amendments of legislation should be carried out in the light of scientific developments in the field of jurisprudence, because only theoretically substantiated legislative changes may be practically effective.

The importance of electronic financial services for further development of national and global financial services markets caused considerable interest of scientists in this sphere. Thus, different aspects of providing electronic financial services were studied by M.M. Kliap, B.M. Kryvolapov, V.L. Pleskach, N.V. Savchuk, H.V. Yurchuk, H.A. Wan and other scholars, but they were focused mostly on the economic aspects of the issue, while the legal side remained unnoticed. Therefore,



researching the legal aspects of providing electronic financial services in foreign countries is topical.

The aim of the article is to research the foreign experience of economic-legal regulation of electronic financial services in order to implement positive practices into Ukrainian legal system.

Electronic financial services may be defined as such financial services that are provided with the use of information and communication, computer systems, electronic communication systems and other technological means, for example, via the Internet, bank machines, etc. The most popular among consumers types of electronic financial services are e-banking, e-payments, e-insurance, e-trading and e-fundraising [2].

The main problems, related to the introduction e-commerce systems, which include electronic financial services in Ukraine, are the following: traditions of cash payments at the consumer market; insufficient level of infrastructure development to be able to use the e-commerce, including electronic financial services; lack of mechanisms for guaranteeing the safety of electronic financial operations; imperfection of normative-legal regulation; restrained attitude of market participants to ensuring transparency of their business; lack of widespread use of electronic money [3, p. 412].

It should be mentioned, that the provision of electronic financial services is based on the establishment of appropriate software and technology complexes by financial institutions. Such complexes should provide the reliability of information systems; the high level of information security; the possibility of standardization and certification of financial products, including the ones provided with the use of information and communications systems; the possibility of integration and information interaction with products and projects of the financial institution and the consumers [3, p. 413].

Foreign countries also used to face similar problems, when they started to introduce e-commerce. But nowadays a lot of countries have well-developed electronic financial services markets.

Thus, the growth of electronic financial services market is the fastest in Spain, Italy, Germany, France and the United Kingdom. At the same time, very high level of the development of such market has been achieved in Belgium, Netherlands, Sweden, Denmark and Norway.

In the United States of America the situation is similar. There are up to 15 million Americans who work online. In the North America electronic financial services, especially banking Internet services, are progressively used for transfers, orders and foreign loans. At the same time the efficiency of banking payment operations increases, while the time and effort spent for opening an account, accessing to it, obtaining information about its state and making payments is substantially reduced [4, p. 52].

Today almost fifty American banks that belong to the largest ones (including "Bank One", "First Union", "Wells Fargo") provide Internet services. At the same time such banks, as "Security First Netbank" (SFNB) carry out payment operations exclusively through the Internet, without having physical representations. Their services are provided with the usage of different Web-forms, with the help of which payment, savings, urgent and card accounts are opened and closed, loans are provided and serviced.

The importance of financial sphere for the whole state causes the necessity of its state control. Thus, the Federal Financial Institutions Examination Council (the FFIEC) was established in the United States of America with the aim of prescribing uniform principles and standards for the federal examination of different financial institutions and developing recommendations for the promotion of uniformity in the supervision of such institutions. The FFIEC has developed the Guidance on Electronic Financial Services and Consumer Compliance (the Guidance), which is a very significant document, although it is not an Official Staff Commentary and does not protect institutions that fulfill this Guidance from civil liability for violations under a variety of statutes addressed [5].





cial services to a consumer without his prior consent to this, and the non-receipt of the consumer's response shall not be considered as his consent;

4. The restriction of some types of activities, such as the use of automated voice communication systems that perform non-personally-owned calls, e-mail (spam) and other types of distant communication without the prior consent of the consumer to their use;

5. The obligation of the member states to apply sanctions to distance financial services providers that violate the requirements of the Directive. Thus, the consumer's right to terminate an agreement with the supplier without paying for the latter, as well as the imposition of fines may be provided with this purpose;

6. The application of judicial and non-judicial means of satisfaction of claims of consumers, whose legal rights were violated [6].

Thus, the analysis of foreign experience of regulating the provision of electronic financial services allows develop general recommendations, the observance of which will contribute to improving the legal regulation of this area in Ukraine.

Ukrainian financial institutions, including banks, need to create and implement an appropriate strategy for the development of new financial services channels in order to enter the new markets of electronic financial services. Such strategy should be based on the development and implementation of complex projects, which may be classified into three types according to their functional features and customer orientation [3, p. 414].

The first type of complex projects includes creation of a corporate information and reference system, which should be posted on the Internet on a special webserver of the financial institution and gradually transformed into a "supermarket" of electronic financial services, that are provided with the usage of the Internet. It is very important to create a special instruction for the consumers that would explain in detail how to use the system. The typical content of such instruction should be established by the profile state body.

The second type of complex projects provides the development of the subsystem of provision of electronic financial services with its subsequent integration into the corporate payment system of the financial institution. Such system requires a very high level of technological and personnel provision.

The last type of complex projects includes development and implementation of e-business systems and gradual involvement of a wide range of consumers in this sphere. This stage requires a lot of work and may be successfully achieved only, if the financial institutions work properly and are stable enough.

It would be reasonable to develop a typical strategy for the development of new electronic financial services channels at the legislative level, which would not be mandatory, but would serve as a standard for financial institutions, especially small and new ones at the market. Additionally, the official Internet sites of state bodies may also contain information useful to financial institutions.

It should be mentioned, that in the national legislation of Ukraine there are no special rules regulating the issue of protecting the rights of consumers of electronic financial services. Therefore, it is necessary to amend the national legal acts with the aim to eliminate this gap. As a model for rulemaking, it is expedient to use the European experience of resolving this issue, since the above-mentioned provisions of the Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 seem to be quite detailed, systematic and effective.

To sum up, it should be mentioned, that the introduction of Internet technologies at the financial services market, including banking, has led to significant changes in this sphere, increased financial globalization and reduced transaction costs. The usage of the Internet helps to strengthen financial globalization both in the process of the activity of traditional banks, which use modern technologies as a component of their ordinary activity, as well as those banks that operate exclusively in the virtu-

al space, without paper carriers of information. But electronic financial services may not be considered as a complete substitute for traditional bank branches yet.

Anyway, new changes at the electronic financial services market will cause the necessity to bring the legislation in conformity with the current requirements of the market. Therefore, further research of economic-legal regulation of electronic financial services remains topical.

Key words: information society, e-commerce, financial services, electronic financial services.

The article is dedicated to the study of foreign experience of economic-legal regulation of the market of electronic financial services. Positive approaches to the regulation of this sphere that may be applied in Ukraine have been identified. It is proposed to develop a strategy for the development of the electronic financial services market. The conclusion about the expediency of establishing the guarantees of the protection of the consumers' of electronic financial services rights according to the European model is made.

Статтю присвячено дослідженню зарубіжного досвіду господарсько-правового регулювання ринку електронних фінансових послуг. Визначено позитивні підходи до регулювання цієї сфери, які можуть бути застосовані в Україні. Запропоновано розробити стратегію розвитку ринку електронних фінансових послуг. Зроблено висновок про доцільність закріплення гарантій захисту прав споживачів електронних фінансових послуг за європейським зразком.

Статья посвящена исследованию зарубежного опыта хозяйственно-правового регулирования рынка электронных финансовых услуг. Определены положительные подходы к регулированию данной сферы, которые могут быть применены в

Украине. Предложено разработать стратегию развития рынка электронных финансовых услуг. Сделан вывод о целесообразности закрепления гарантий защиты прав потребителей электронных финансовых услуг по европейскому образцу.

References

1. Вересюк А. Банкиры испытывают новый способ электронных платежей. Банковская практика за рубежом. 2001. № 2. С. 56–59.
2. Wan H. A. *Electronic Financial Services: Technology and Management*. Oxford: Chandos Publishing, 2006. 472 p.
3. Науменкова С.В. Ринок фінансових послуг: навч. посіб. / С.В. Науменкова, С.В. Міщенко. К.: Знання, 2010. 532 с.
4. Коваленко О. Мережева економіка: нові правила. Тенденції розвитку Е-бізнесу в Європі взагалі й в Україні зокрема. Вісник Тернопільської академії народного господарства. 2002. № 8–2. С. 175–178.
5. About the FFIEC. URL: <https://www.ffiec.gov/about.htm>.
6. The Guidance on Electronic Financial Services and Consumer Compliance. URL: <https://www.ffiec.gov/pdf/efs.pdf>.
7. The Cardholder and Electronic Financial Services Terms and Conditions. URL: <http://www.tdcanadatrust.com/document/PDF/consent/530012-20150505.pdf>.
8. Хартман А. Стратегия успеха в интернет-экономике / А. Хартман, Д. Сифонус, Д. Коэдор. М.: Лори, 2001. 376 с.
9. Василенко М.Д. Інституційно-правові механізми адаптації права України до права ЄС. Актуальні проблеми держави і права: зб. наук. пр. / редкол.: С.В. Ківалов (голов. ред.), Ю.М. Оборотов (заст. голов. ред.), Л.Р. Біла (відп. секр.) та ін.; ОНЮА. Одеса: Юрид. л-ра, 2005. Вип. 25. С. 554–563.
10. Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC. URL: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32002L0065>.