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# Implementation of the European Union Recommendations on Strengthening the Criminal Liability for Offences in the Provision of Payment Services

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## Abstract

The transition of an increasing number of social relations into the virtual space and the intensive development of information technology is accompanied by the emergence of new illegal phenomena, in particular, of a criminal law nature, which requires appropriate legal regulation. Recently, the number of infringements on public relations in the field of electronic payments has significantly increased, including by issuers of electronic wallets. This trend creates a threat to any state that encourages the international community to develop appropriate norms that should be implemented in national legislation to bring it closer to international standards. Currently, active work is underway to strengthen criminal liability in Ukraine for violations in the provision of payment services, considering the recommendations of the European Union. The purpose of the study is to analyse and develop conclusions on the advisability of implementing the recommendations of the European Union in the national criminal legislation regarding the tightening of sanctions for criminal offences committed in the field of providing payment services using non-cash means of payment. Methodological tools are selected in accordance with the goals set, the specifics of the object and the subject of the study. The study used the general dialectical method of scientific knowledge of real phenomena, their connection with prosecution for criminal offences, and general scientific and special methods of legal science. The scientific position is argued that the proposed changes to the Criminal Code of Ukraine by introducing liability for illegal actions with electronic money are formulated in such a way that it allows enforcing such a rule. According to the current legislation, it is determined that in the presence of a license to provide payment services, certain legal entities have the right to issue electronic money, in particular: banks, branches of foreign payment institutions, electronic money institutions, postal operators, the National Bank of Ukraine, state authorities and authorities local self-government. Considering that all the listed persons are legal, they are not the subject of a criminal offence, including for violations in the field of payment services. The inconsistency of national legislation with the requirements of international standards on the criminalisation of certain acts committed in the field of payment services necessitates further study and the development of recommendations for harmonising the current legislation

## Keywords:

financial offences; financial crimes; offences in cyberspace; criminal offences with electronic money; offences in the field of payment services

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## Introduction

In recent years, Ukraine has taken decisive steps towards bringing the standards of public life closer to European ones. The important part of that process is the sphere of protection of public legal relations from illegal encroachments and from criminal offences. For this purpose, Ukraine ratifies relevant international norms and implements them into national legislation, considers the recommendations of other directives and, if necessary, improves national regulations. Modern economic relations are characterised by the active development of payment services that go beyond the relationship “financial institution – client” in the real world, and mostly move to the virtual world. Electronic money and e-wallets in various payments are becoming commonly used. The spread of electronic money, which occurs simultaneously with the rapid development of telecommunications technologies, can radically change the existing mechanism of the monetary system of Ukraine [1, p. 39]. Today, more and more public relations are moving to the virtual sphere, and information technology relations are developing more and more intensively, which is accompanied by the emergence of new phenomena and requires appropriate legal regulation [2].

At the same time, this trend has led to a significant increase in the number of encroachments on public relations in the field of electronic payments, in particular, by issuers of such wallets – participants of domestic and international payment systems. After all, in modern world there is a situation in which people’s global capabilities have changed significantly. In particular, there has been a continuous transition of public relations to cyberspace, which has led to the desire of criminals to spend more effort on committing offences in online space than in physical space. At the time when the number of illegal acts with cash money has significantly decreased, the statistics of fraud with online payments shows the opposite trend [3]. This trend leads to a decrease in the level of confidence in the national financial system. The common perception of society that the integrity of social relations in this area can be violated, leads to devastating consequences. Therefore, the fragility of trust in the security of financial transactions in cyberspace, although is not a cyberspace problem, but is directly related to it and significantly enhanced by this problem [4].

Moreover, as stated in Directive 2019/713 of the European Parliament and of the Council of the European Union<sup>1</sup> (hereinafter – EU Directive 2019/713) “fraud and counterfeiting of non-cash means of payment are threats to security, as they represent a source of income for organised crime and are therefore enablers for other criminal activities such as terrorism, drug trafficking and human trafficking”. In addition, counterfeiting of non-cash means of payment causes consumer distrust of online payments and significant economic losses and

is an obstacle to the digital single market. The above determines the relevance of the study of issues related to criminal prosecution in the field of payment services, considering the legal position of the world’s leading institutions.

The issue of prosecution for offences in the field of payment services was raised by some Ukrainian researchers, in particular, O. Kryshevych [5], V. Babanina [6], A. Klochko, N. Volchenko, N. Kletsova [7], V. Topchiiy, G. Didkivska, T. Mudryak [8] and foreign scientists, S. Abbass, S.E.F. Osman [9], P. Wang, M. Su, J. Wang [10], L. Kien, N. Binh [11]. However, the issue of implementing the international standards on liability for the offences in the provision of payment services is rather underinvestigated. Undoubtedly, that for Ukrainian society such phenomena as modern payment systems and electronic money are relatively new, so the legal framework, including criminal law, was unprepared for such a development of crime, which uses payment instruments, electronic transfers, and electronic payment systems [12, p. 147; 13].

*The purpose of the study* is to investigate the peculiarities of the implementation to the national legislation of the European Union recommendations on strengthening criminal liability for offences in the field of payment services and to determine the possibility and prospects of criminal prosecution for this offence.

## Materials and Methods

The methodological basis of the study was a general dialectical method of knowledge of real phenomena and their relationship with the theory and practice of prosecuting criminal offences committed in the field of payment services, including those that are the subject of electronic money; **formal and logical method**, which revealed elements of the legal mechanism of international recommendations for strengthening criminal liability for offences committed with electronic money; **comparative law method** was used in the analysis of current legislation and international regulations; **logical and legal (dogmatic)** – when formulating proposals for amendments to legislative acts.

The listed methods were used at all stages of the study, in particular: definition of a scientific problem, statement of the purpose and tasks; determining the specifics of establishing liability for violations in the use of electronic money under international standards; identifying the features of strengthening liability for criminal offences in the use of electronic wallets and electronic money stored on them, the problems that arise during the introduction of criminal liability for offences committed by issuers of electronic money, and ways to solve them. The theoretical basis of the study were the papers by Ukrainian and foreign researchers on aspects of criminal liability for offences committed in cyberspace with electronic money.

<sup>1</sup>Directive of the European Parliament and of the Council No. 2019/713 “On Combating Fraud and Counterfeiting of Non-Cash Means of Payment and Replacing Council Framework Decision 2001/413/JHA”. (2019, April). Retrieved from <https://eur-lex.europa.eu/eli/dir/2019/713/oj>.

## Results and Discussion

### *The current state of protection of public relations in the field of electronic payments*

Nowadays, online opportunities significantly expand the prospects in the activities of any business entity, including those operating in the market of payment services. Modern organisations are actively using information technology to solve critical problems [14], one of which is the development of online payments with electronic money through electronic wallets. The following processes are taking place in the global information environment: the development of models of interaction of participants in financial settlements based on the use of the Internet resources and mobile phones. Therefore, high-quality payment services are an important factor in the development of international transactions in the field of e-business [15]. And confidence in their safety is a guarantee of widespread distribution among all segments of the population involved.

Modern development of electronic instruments of non-cash payments has led to the emergence of new tools in this area, in particular, electronic wallets, which store electronic money and through which payments can be made between different persons. The development of electronic money systems at the present stage of evolution of society is characterised by a gradual narrowing of the use of cash and paper payment documents, the transition to new payment instruments and modern payment technologies. Electronic money is widely used in circulation and becomes an important tool of financial infrastructure of economically developed countries [16, p. 703]. According to the law<sup>1</sup>, an electronic wallet is an issuer's account (or operator, or agent, or trader, or user) generated (created) in a processing system (issuer's or operator's software) for accounting, storage and transactions with electronic money. However, the emergence of new means of payment not only simplified this procedure, but also provoked a modification of approaches to committing illegal acts in the field of payment services. At the same time, the legislator is one step behind criminals, who are constantly improving and inventing a way to avoid responsibility for their actions.

One of the determinants of the criminalisation of digital payments is the peculiarity of non-cash means of payment, namely their cross-border dimension, and the rapid penetration of the digital component in all

spheres of public life and the spread of innovation in many areas, including payment technologies. Respectively, new technologies of payment transactions are possible only using innovative payment instruments. At the same time, the variety of means of payment arising from the rapid development of the Internet technologies not only creates new opportunities for individual consumers, including businesses, but also contributes to the emergence of additional opportunities in crime, conditioned by the development of criminal technology. In fact, special attention is paid to this in EU Directive 2019/713<sup>2</sup>, which emphasises that the legal basis should be relevant to combat such offences and proposes steps to protect society from these destructive phenomena. In particular, it is recommended to recognise as a criminal offence the illegal use of stolen or otherwise illegally appropriated or obtained corporeal non-cash means of payment, as well as the illegal use of counterfeit or falsified non-corporeal non-cash means of payment. Therefore, both corporeal non-cash means of payment and non-corporeal non-cash means of payment must be recognised as the subject of a criminal offence.

According to the Article 2 of Directive (EU) 2019/713 of the European Parliament and of the Council of 17 April 2019 on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA<sup>3</sup> "non-cash payment instrument" means a non-corporeal or corporeal protected device, object or record, or a combination thereof, other than legal tender, and which, alone or in conjunction with a procedure or a set of procedures, enables the holder or user to transfer money or monetary value, including through digital means of exchange. Accordingly, "digital means of exchange implies any electronic money as defined in point (2) of Article 2 of Directive 2009/110/EC of the European Parliament and of the Council<sup>4</sup> or virtual currency. Legal tender means currency, banknotes, and coins, except for collectibles such as gold, silver and other metal coins and banknotes, which are not normally used as legal tender, or numismatic coins. This clarification is contained in Council Directive 2006/112/EC "On the Common System of Value Added Tax"<sup>5</sup>.

According to the current legislation<sup>6</sup>, in Ukraine it is possible to make non-cash payments, namely, transfer funds from payers' accounts to payees' accounts and transfer of payment funds provided by cash payers to

<sup>1</sup>Resolution of the National Bank of Ukraine No. 481 "On Amendments to Certain Regulations of the National Bank of Ukraine on Regulation of Issuance and Circulation of Electronic Money". (2010, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/z1336-10#n19>.

<sup>2</sup>Directive of the European Parliament and of the Council No. 2019/713 "On Combating Fraud and Counterfeiting of Non-Cash Means of Payment and Replacing Council Framework Decision 2001/413/JHA". (2019, April). Retrieved from <https://eur-lex.europa.eu/eli/dir/2019/713/oj>.

<sup>3</sup>Directive of the European Parliament and of the Council No. 2019/713 "On Combating Fraud and Counterfeiting of Non-Cash Means of Payment and Replacing Council Framework Decision 2001/413/JHA". (2019, April). Retrieved from <https://eur-lex.europa.eu/eli/dir/2019/713/oj>.

<sup>4</sup>Directive of the European Parliament and of the Council No. 2009/110/EC "On the Taking Up, Pursuit 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 (Text with EEA Relevance)". (2009, September). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009L0110>.

<sup>5</sup>Directive of Council No. 2006/112/EC "On the Common System of Value Added Tax". (2006, November). Retrieved from [https://zakon.rada.gov.ua/laws/show/994\\_928#Text](https://zakon.rada.gov.ua/laws/show/994_928#Text).

<sup>6</sup>Law of Ukraine No. 1591-IX "On Payment Services". (2021, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1591-20#Text>.

payees' accounts, using the following means of payment: payment document, electronic money, electronic means of payment, letters of credit, checks, bills. Directive (EU) 2019/713<sup>1</sup> as to offences related to the fraudulent use of corporeal non-cash payment instruments, recommends ensuring that, when committed intentionally, the following conduct is punishable as a criminal offence:

- “theft or other unlawful appropriation of a corporeal non-cash payment instrument;
- fraudulent counterfeiting or falsification of a corporeal non-cash payment instrument;
- possession of a stolen or otherwise unlawfully appropriated, or of a counterfeit or falsified corporeal non-cash payment instrument for fraudulent use; the procurement for oneself or another, including the receipt, appropriation, purchase, transfer, import, export, sale, transport or distribution of a stolen, counterfeit or falsified corporeal non-cash payment instrument for fraudulent use”.

***Status of implementation of international norms in the field of protection of electronic payments against unlawful encroachments into national legislation***

Analysis of Ukrainian legislation proves that the above conducts are covered by the corpus delicti, the responsibility for which is provided by Article 200 of the Criminal Code of Ukraine<sup>2</sup> (hereinafter – CCU) – “Illegal actions with documents for transfer, payment cards and other means of access to bank accounts, electronic money, equipment for their manufacture”. Thus, almost all the specified subjects of a criminal offence concern corporeal (material) non-cash payment instruments. The exception is electronic money, which is “units of value stored in electronic form issued by an issuer of electronic money to perform payment transactions, which are accepted as a mean of payment by persons other than their issuer and is a monetary obligation of such issuer of electronic money”<sup>3</sup>. Electronic money is accounted for and stored in electronic wallets. With their help, transactions with electronic money are carried out. Therefore, it is fair to say that electronic money is a certain sequence of numbers that symbolise banknotes and coins, and in fact the bearer's requirement for the issuer to repay electronic money, i.e., to exchange them

for conventional cash or non-cash money [17, p. 162, 167], and therefore, they have a non-corporeal form.

“The Article 5 of Directive (EU) 2019/713<sup>4</sup> as to offences related to the fraudulent use of non-corporeal non-cash payment instruments, recommends ensuring that, when committed intentionally, the following conduct is punishable as a criminal offence:

- unlawful obtainment of a non-corporeal non-cash payment instrument, at least when this obtainment has involved the commission of one of the offences referred to in Articles 3 to 6 of Directive 2013/40/EU<sup>5</sup>, or misappropriation of a non-corporeal non-cash payment instrument;
- fraudulent counterfeiting or falsification of a non-corporeal non-cash payment instrument;
- holding of an unlawfully obtained, counterfeit or falsified non-corporeal non-cash payment instrument for fraudulent use, at least if the unlawful origin is known at the time of the holding of the instrument;
- procurement for oneself or another, including the sale, transfer or distribution, or the making available, of an unlawfully obtained, counterfeit or falsified non-corporeal non-cash payment instrument for fraudulent use”.

As mentioned above, electronic money is a non-corporeal non-cash means of payment, and therefore, the current legislation provides for criminal liability for illegal acts referred to in Article 5 EU Directive 2019/713<sup>6</sup>. At the same time, the legislative lack of regulation in Ukraine on the issue of prosecuting for illegal opening and servicing of electronic wallets as an unalterable means of performing payment transactions with electronic money is noteworthy. For Ukraine, as a country aspiring to join the European Union, one of the main tasks is to harmonise national legislation with European standards to achieve compliance with the legal system of the European Union. By signing and ratifying the Association Agreement between Ukraine, on the one hand, and the European Union, on the other, on June 27, 2014<sup>7</sup>, Ukraine has committed itself to adapting national legislation to European Union standards [18].

Therefore, to implement the provisions of EU Directive 2019/713<sup>8</sup> and the Convention on Cybercrime<sup>9</sup> (ratified with reservations), the Verkhovna Rada of Ukraine registered a draft law amending some legislative acts

<sup>1</sup>Directive of the European Parliament and of the Council No. 2019/713 “On Combating Fraud and Counterfeiting of Non-Cash Means of Payment and Replacing Council Framework Decision 2001/413/JHA”. (2019, April). Retrieved from <https://eur-lex.europa.eu/eli/dir/2019/713/oj>.

<sup>2</sup>Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

<sup>3</sup>Law of Ukraine No. 1591-IX “On Payment Services”. (2021, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1591-20#Text>.

<sup>4</sup>Directive of the European Parliament and of the Council No. 2019/713 “On Combating Fraud and Counterfeiting of Non-Cash Means of Payment and Replacing Council Framework Decision 2001/413/JHA”. (2019, April). Retrieved from <https://eur-lex.europa.eu/eli/dir/2019/713/oj>.

<sup>5</sup>Directive of the European Parliament and of the Council No. 2013/40/EU “On Attacks Against Information Systems and Replacing Council Framework Decision 2005/222/JHA”. (2013, August). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32013L0040>.

<sup>6</sup>Directive of the European Parliament and of the Council No. 2019/713 “On Combating Fraud and Counterfeiting of Non-Cash Means of Payment and Replacing Council Framework Decision 2001/413/JHA”, op. cit.

<sup>7</sup>Association Agreement Between Ukraine, of the One Part, and the European Union, the European Atomic Energy Community and Their Member States, of the Other Part. (June, 2014). Retrieved from [https://zakon.rada.gov.ua/laws/show/984\\_011#Text](https://zakon.rada.gov.ua/laws/show/984_011#Text).

<sup>8</sup>Directive of the European Parliament and of the Council No. 2019/713 “On Combating Fraud and Counterfeiting of Non-Cash Means of Payment and Replacing Council Framework Decision 2001/413/JHA”, op. cit.

<sup>9</sup>Law of Ukraine 2824-IV “On Ratification of the Convention on Cybercrime”. (2005, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/2824-15#Text>.

on administrative and criminal liability for violations related to payment services<sup>1</sup> (hereinafter – the Draft). According to the Draft, it is proposed to introduce criminal liability for illegal actions with electronic money by supplementing the Criminal Code of Ukraine<sup>2</sup> with a new Article 200-1 “Illegal actions with electronic money”. It is supposed to recognise the following actions as criminal offences:

- provision of electronic money issuance services by persons who have not passed the authorisation of activities in accordance with the legislation of Ukraine;
- provision of services for the execution of payment transactions with electronic money, including the opening and maintenance of electronic wallets, to persons who have not passed the authorisation of activities in accordance with the legislation of Ukraine.

A new title and wording of Article 200 of the Criminal Code of Ukraine<sup>3</sup> “Illegal actions with payment instructions, payment instruments and other instruments of access to bank and/or payment accounts, electronic wallets”, which deals with offences also related to electronic wallets, such as their counterfeiting, purchase, storage, transportation, sending them for the purpose of selling payment instruments or other means of access to them, or their use or sale. This position of the legislator on the adjustment of the disposition of Article 200 of the Criminal Code of Ukraine<sup>4</sup> and the introduction of Article 200-1 of the Criminal Code of Ukraine<sup>5</sup>, the disposition of which contains certain acts contained in the current Criminal Code of Ukraine<sup>6</sup> in Article 200 “Illegal actions with transfer documents, payment cards and other means of access to bank accounts, electronic money, equipment for their production” coincides with the findings of Ukrainian researchers. In particular, the expediency of separating several types of crimes from the specified corpus delicti based on the results of the analysis of scientific views was emphasised by A.M. Klochko [12, p. 135; 19].

Returning to the analysis of the proposed in the Draft<sup>7</sup> statement of the disposition of Article 200-1 of the Criminal Code of Ukraine<sup>8</sup> “Illegal actions with electronic money” it is seen that its wording makes the norm knowingly “dead”. This position is based on an analysis of sectoral legislation governing the provision

of payment services. In accordance with paragraph 7, paragraph 1 of Article 5 of the Law of Ukraine “On Payment Services”<sup>9</sup> the provision of services for the issuance of electronic money and the provision of services for payment transactions with them are financial payment services. In part 1 of Article 10 of this Law<sup>10</sup> it is established a list of entities belonging to payment service providers, which include: banks, payment institutions, branches of foreign payment institutions, electronic money institutions, financial institutions entitled to provide payment services, postal operators, providers of non-financial payment services, the National Bank of Ukraine, public authorities, and local governments. At the same time, paragraph 1 of Article 57 of the Law<sup>11</sup> provides a list of persons who may be issuers of electronic money. It is noteworthy that they are the same entities who are referred to as payment service providers, except payment institutions, financial institutions entitled to provide payment services and non-financial payment service providers.

All the above persons belonging to payment service providers are legal entities that have the right to carry out such activities only if they have a license issued by the National Bank of Ukraine to provide payment services. In addition, a mandatory feature of the objective side of Article 200-1<sup>12</sup> is the implementation of these actions without authorisation in the manner prescribed by law. The authorisation of such activities is a procedure of admission of the relevant entity by the National Bank of Ukraine to the provision of payment services, which is carried out by issuing a license and (or) inclusion in the Register of payment infrastructure.

Thus, only legal entities can take the actions outlined in Article 200-1 “Illegal actions with electronic money”. This makes it impossible to prosecute the person who committed the acts provided for in Article 200-1 of the Criminal Code of Ukraine<sup>13</sup>. Ultimately, according to the national criminal law doctrine, a legal entity is not a subject of a criminal offence. The legislation provides an opportunity to apply to legal entities measures of a criminal nature, in accordance with Article 96-3 of the Criminal Code of Ukraine<sup>14</sup>. However, its disposition does not provide for the criminal law measures to legal entities that have committed illegal acts with electronic

<sup>1</sup>Draft Law Amending Some Legislative Acts on Administrative and Criminal Liability for Violations Related to Payment Services No. 6295. (2021, November). Retrieved from [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=73173](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73173).

<sup>2</sup>Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

<sup>3</sup>Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

<sup>4</sup>*Ibidem*, 2001.

<sup>5</sup>*Ibidem*, 2001.

<sup>6</sup>*Ibidem*, 2001.

<sup>7</sup>Draft Law Amending Some Legislative Acts on Administrative and Criminal Liability for Violations Related to Payment Services No. 6295. (2021, November). Retrieved from [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=73173](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73173).

<sup>8</sup>Criminal Code of Ukraine, op cit.

<sup>9</sup>Law of Ukraine No. 1591-IX “On Payment Services”. (2021, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1591-20#Text>.

<sup>10</sup>*Ibidem*, 2021.

<sup>11</sup>*Ibidem*, 2021.

<sup>12</sup>Criminal Code of Ukraine, op cit.

<sup>13</sup>Criminal Code of Ukraine, op cit.

<sup>14</sup>Criminal Code of Ukraine, op cit.

money, because Article 200-1 of the Criminal Code of Ukraine<sup>1</sup> is not included in the list of articles, the commission of which is the basis for the application to a legal entity of measures of a criminal nature. Moreover, the technological features of such activities as the issuance of electronic money and transactions with them, allows identifying a specific person from among the employees of a particular institution, who had the opportunity to carry out such actions without proper authorisation. That is why the disposition of Article 200-1 of the Criminal Code of Ukraine<sup>2</sup>, set out in the Draft<sup>3</sup>, is unusable for law enforcement, which necessitates its further refinement and improvement to approximate Ukrainian legislation to European standards.

## Conclusions

The current situation is characterised by the rapid development of online technologies in all spheres of life. The field of payment services is no exception, most of which are distributed in non-cash form. One of the features of the development of modern payments is the emergence of such payment instruments as electronic money using electronic wallets. The latest trend in the

field of settlements, along with providing counterparties with the ability to quickly carry out operations, has provoked the emergence of new ways of committing illegal acts, for example, using incorporeal non-cash means of payment. The international community is following the path of prompt response to the emergence of new challenges, in particular, the entry into force of rules on prosecution for offences in the use of electronic wallets. In contrast, national legislation is lagging, which contributes to the proliferation of illegal acts with electronic money. This, in turn, creates a negative image of the country in the international arena.

This requires further study to bring in line with international requirements of national criminal law to establish criminal liability for certain violations in the field of payment services. This will eliminate significant gaps and differences between Ukrainian legislation and the legislation of EU member states in the field of counterfeiting of non-cash means of payment, which may interfere the prevention, detection, and prosecution of such illegal activities. This approach will make international police cooperation more effective in preventing various crimes.

## References

- [1] Kuvarzin, O.S. (2020). Improvement of administrative responsibility for violation of the order of payment of payments with use of electronic payment methods for goods (services). *Law and Society*, 1(2), 37-41. doi: 10.32842/2078-3736/2020.1-2.7.
- [2] Cherniei, V., Cherniavskiy, S., Babanina, V., & Tykhonova, O. (2021). Criminal liability for cryptocurrency transactions: Global experience. *European Journal of Sustainable Development*, 10(4), 304-316. doi: 10.14207/ejsd.2021.v10n4p304.
- [3] Miró-Llinares, F., & Moneva, A. (2019). What about cyberspace (and cybercrime alongside it)? A reply to Farrell and Birks "Did cybercrime cause the crime drop?". *Crime Science*, 8, article number 12. doi: 10.1186/s40163-019-0107-y.
- [4] Atkins, S., & Lawson, Ch. (2021). Cooperation amidst competition: Cybersecurity partnership in the US financial services sector. *Journal of Cybersecurity*, 7(1), article number tyab024. doi: 10.1093/cybsec/tyab024.
- [5] Kryshevych, O.V. (2019). Fraud in the field of circulation of bank payments cards: Criminal legal aspect. In *Actual problems criminal law: Materials X all-Ukrainian scientific-theoretical conference* (pp. 81-84). Kyiv: National Academy of Internal Affairs.
- [6] Babanina, V.V. (2021). Bureau of economic security of Ukraine as a subject implementation of criminal legislation. In *Legislative support of activities bureau of economic security of Ukraine: Materials of the scientific conference with international participation* (pp. 23-25). Kharkiv-Kyiv: National Academy of Internal Affairs.
- [7] Klochko, A.M., Volchenko, N.V., & Kletsova, N.V. (2021). Economic and legal principles of banking security in the context of strengthening European integration processes in Ukraine. *Law Bulletin*, 18, 164-171.
- [8] Topchiiy, V.V., Didkivska, G.V., & Mudryak, T.O. (2019). *Criminal liability for crimes in the sphere of economic activity*. Vinnytsia: Drukarnya-vydavnytstvo "Tvory".
- [9] Abbass, S.M., & Osman, S.E.F. (2016). Trust model to increase purchase intent among e-commerce consumers. *Journal of Theoretical and Applied Information Technology*, 85(2), 172-182.
- [10] Wang, P., Su, M., & Wang, J. (2021). Organized crime in cyberspace: How traditional organized criminal groups exploit the online peer-to-peer lending market in China. *British Journal of Criminology*, 61(2), 303-324.
- [11] Kien, L.T., & Binh, N.H. (2021). Crime in era of digital technology: What can change with cryptocurrency status clarification for development of information environment of Vietnam? *Webology*, 18(Special issue), 466-475. doi: 10.14704/WEB/V18SI04/WEB18141.

<sup>1</sup>Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

<sup>2</sup>*Ibidem*, 2001.

<sup>3</sup>Draft Law Amending Some Legislative Acts on Administrative and Criminal Liability for Violations Related to Payment Services No. 6295. (2021, November). Retrieved from [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=73173](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73173).

- [12] Klochko, A.M. (2020). *Theoretical and practical grounds of counteracting crime in the field of banking in Ukraine* (Doctoral dissertation, V.M. Koretsky Institute of State and Law of National Academy of Sciences of Ukraine, Sumy, Ukraine).
- [13] Sytnyk, I.P. (2019). Methodological aspects of the functioning of new subjects of the payment system of Ukraine under the condition of its transformation. *Priazovsky Economic Bulletin*, 6(17), 328-333. doi: 10.32840/2522-4263/2019-6-59.
- [14] Kavak, H., Padilla, J.J., Vernon-Bido, D., Diallo, S.Y., Gore, R., & Shetty, S. (2021). Simulation for cybersecurity: State of the art and future directions. *Journal of Cybersecurity*, 7(1), article number tyab005. doi: 10.1093/cybsec/tyab005.
- [15] Radko, Ye.B., & Meshko, N.P. (2018). The modern state of internet-banking, as factory: Perspectives, advantages and negligence. *Efektivna Ekonomika*, 12. doi: 10.32702/2307-2105-2018.12.205.
- [16] Batrakova, T.I., & Ghrinchenko, A.J. (2016). Problems and prospects of electronic money development in Ukraine. *Economy and Society*, 7, 702-706.
- [17] Nykyforchuk, V.D. (2018). Electronic money in the sphere of financial and banking crimes: Problems and definition. *Scientific Herald of the National Academy of Internal Affairs*, 107(2), 158-171.
- [18] Gherasymenko, Ye. (2018). European integration: Directive history. *Journal of Modern Lawyer*, 4. Retrieved from <http://jurist.ua/?article/1525>.
- [19] Tykhonova, O.V., Kholostenko, A.V., Herasymenko, L.V., Shevchuk, O.O., & Akimov, M.O. (2020). Comparative analysis of combating economic crimes in Ukraine and European Union. *International Journal of Management*, 11(3), 624-632. doi: 10.34218/IJM.11.3.2020.064.

### Список використаних джерел

- [1] Куварзін О.С. Удосконалення адміністративної відповідальності за порушення порядку проведення розрахунків із використанням електронних платіжних засобів за товари (послуги). *Право і суспільство*. 2020. Вип. 1, Ч. 2. С. 37–41. doi: 10.32842/2078-3736/2020.1-2.7.
- [2] Cherniei V., Cherniavskiy S., Babanina V., Tykhonova O. Criminal liability for cryptocurrency transactions: Global experience. *European Journal of Sustainable Development*. 2021. Vol. 10, No. 4. P. 304–316. doi: 10.14207/ejsd.2021.v10n4p304.
- [3] Miró-Llinares F., Moneva A. What about cyberspace (and cybercrime alongside it)? A reply to Farrell and Birks “Did cybercrime cause the crime drop?”. *Crime Science*. 2019. Vol. 8. Article number 12. doi: 10.1186/s40163-019-0107-y.
- [4] Atkins S., Lawson Ch. Cooperation amidst competition: Cybersecurity partnership in the US financial services sector. *Journal of Cybersecurity*. 2021. Vol. 7, No. 1. Article number tyab024. doi: 10.1093/cybsec/tyab024.
- [5] Кришевич О.В. Шахрайство у сфері обігу банківських платіжних карток: кримінально-правовий аспект. *Актуальні проблеми кримінального права: матеріали X Всеукр. наук.-теор. конф. (м. Київ, 22 лист. 2019 р.)*. Київ, 2019. С. 81–84.
- [6] Бабаніна В.В. Бюро економічної безпеки України як суб'єкт реалізації кримінального законодавства. *Законодавче забезпечення діяльності бюро економічної безпеки України: матеріали наук.-практ. конф. з міжнар. участю (м. Харків-Київ, 17 трав. 2021 р.)*. Харків-Київ, 2021. С. 23–25.
- [7] Ключко А.М., Волченко Н.В., Клецова Н.В. Економіко-правові засади банківської безпеки в умовах посилення євроінтеграційних процесів в Україні. *Юридичний бюлетень*. 2021. № 18. С. 164–171.
- [8] Топчій В.В., Дідківська Г.В., Мудряк Т.О. Кримінальна відповідальність за злочини у сфері господарської діяльності: навч. посіб. Вінниця: Друкарня-видавництво «Твори», 2019. 320 с.
- [9] Abbass S.M., Osman S.E.F. Trust model to increase purchase intent among e-commerce consumers. *Journal of Theoretical and Applied Information Technology*. 2016. Vol. 85, No. 2. P. 172–182.
- [10] Wang P., Su M., Wang J. Organized crime in cyberspace: How traditional organized criminal groups exploit the online peer-to-peer lending market in China. *British Journal of Criminology*. 2021. Vol. 61, No. 2. P. 303–324.
- [11] Kien L.T., Binh N.H. Crime in era of digital technology: What can change with cryptocurrency status clarification for development of information environment of Vietnam? *Webology*. 2021. Vol. 18, Special issue. P. 466–475. doi: 10.14704/WEB/V18SI04/WEB18141.
- [12] Ключко А.М. Теоретико-прикладні засади протидії злочинам у сфері банківської діяльності в Україні: дис. ... д-ра юрид. наук: 12.00.08 / Інститут держави і права ім. В.М. Корецького НАН України. Суми, 2020. 563 с.
- [13] Ситник І.П. Методологічні аспекти функціонування нових суб'єктів платіжної системи України за умови її трансформації. *Приазовський економічний вісник*. 2019. № 6(17). С. 328–333.
- [14] Simulation for cybersecurity: State of the art and future directions / H. Kavak et al. *Journal of Cybersecurity*. 2021. Vol. 7, No. 1. Article number tyab005. doi: 10.1093/cybsec/tyab005.
- [15] Радько Є.Б., Мешко Н.П. Сучасний стан інтернет-банкінгу як явища: перспективи, переваги та недоліки. *Ефективна економіка*. 2018. № 12. doi: 10.32702/2307-2105-2018.12.205.

- [16] Батракова Т.І., Грінченко А.Ю. Проблеми та перспективи розвитку електронних грошей в Україні. *Економіка і суспільство*. 2016. Вип. 7. С. 702–706.
- [17] Никифорчук В.Д. Електронні гроші у сфері фінансово-банківських злочинів: проблематика та визначення. *Науковий вісник Національної академії внутрішніх справ*. 2018. Вип. 107, № 2. С. 158–171.
- [18] Герасименко Є. Євроінтеграція: Директивна історія. Журнал сучасного правника. 2018. № 4. URL: <http://jurist.ua/?article/1525> (дата звернення: 10.11.2021).
- [19] Comparative analysis of combating economic crimes in Ukraine and European Union / O.V. Tykhonova et al. *International Journal of Management*. 2020. Vol. 11, No. 3. P. 624–632. doi: 10.34218/IJM.11.3.2020.064.

## Впровадження рекомендацій Європейського Союзу щодо посилення кримінальної відповідальності за порушення у сфері надання платіжних послуг

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### Анотація

Активний перехід суспільних відносин до віртуальної сфери й інтенсивний розвиток інформаційних технологій супроводжуються появою нових протиправних явищ, зокрема кримінально-правового характеру, що потребує відповідного правового регулювання. Останніми роками суттєво збільшилася кількість посягань на суспільні відносини у сфері електронних розрахунків, зокрема з боку емітентів електронних гаманців. Зазначена тенденція створює загрози для будь-якої держави, що спонукає міжнародну спільноту до розроблення відповідних норм, які мають бути імплементовані до національного законодавства з метою наближення його до міжнародних стандартів. Нині триває активна робота щодо посилення в Україні кримінальної відповідальності за порушення у сфері надання платіжних послуг з урахуванням рекомендацій Європейського Союзу. Метою дослідження є аналіз і розроблення висновків стосовно доцільності імплементації до національного кримінального законодавства рекомендацій Європейського Союзу в частині посилення санкцій за кримінальні правопорушення, що вчиняються у сфері надання платіжних послуг з використанням безготівкових платіжних засобів. Методологічний інструментарій обрано відповідно до поставленої мети, специфіки об'єкта та предмета дослідження. У дослідженні використано загальний діалектичний метод наукового пізнання реальних явищ, їх зв'язок з притягненням до відповідальності за кримінальні правопорушення, а також загальнонаукові та спеціальні методи юридичної науки. Аргументовано наукову позицію стосовно того, що запропоновані зміни до Кримінального кодексу України в напрямі запровадження відповідальності за незаконні дії з електронними грошима сформульовані в такий спосіб, що унеможливають правозастосування такої норми. На підставі аналізу чинного законодавства визначено, що за наявності ліцензії на надання платіжних послуг право на випуск електронних грошей мають окремі юридичні особи, зокрема банки, філії іноземних платіжних установ, установи електронних грошей, оператори поштового зв'язку, Національний банк України, органи державної влади й органи місцевого самоврядування. З огляду на те, що всі перелічені особи є юридичними, вони не є суб'єктом кримінального правопорушення, зокрема за порушення у сфері платіжних послуг. Неузгодженість національного законодавства з вимогами міжнародних норм щодо криміналізації окремих діянь, що вчиняються у сфері надання платіжних послуг, обумовлює потребу в подальших наукових дослідженнях у вказаному напрямі, а також розробленні рекомендацій щодо гармонізації чинного законодавства.

### Ключові слова:

фінансові правопорушення; фінансові злочини; правопорушення в кіберпросторі; кримінальні правопорушення з електронними грошима; правопорушення у сфері платіжних послуг