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## **LEGAL REGULATION OF DIGITAL ECONOMY RELATIONSHIP: GENERAL PRINCIPLES AND PROBLEMS**

*The article is devoted to the general and specific (concerning electronic registries in the field of taxation) problems of legal support for relationship emerging in the digital economy. There is given a characteristic of the system of regulatory legal acts that regulate these relations. The classification of these legal acts is carried out, which can be divided into three groups: acts that regulate modern information relationship and use of information and communication/digital technology in the main spheres of public life; acts primarily devoted to the digital economy, including e-commerce; acts that regulate various sectoral relationship and contain separate rules for the application of these technology in the relevant sphere). The problems of legal support of the digital economy are revealed both at the level of regulatory and legal framework and law enforcement.*

**Keywords:** digital technology; digital economy/DE; e-business; electronic registers; improvement of legislation.

***Вінник Оксана, Шаповалова Ольга. Правове регулювання цифрових економічних відносин: загальні принципи та проблеми.***

*Стаття присвячена загальним та окремим (щодо електронних реєстрів у сфері оподаткування) проблемам правового забезпечення відносин, що складаються у сфері цифрової економіки. Дається характеристика системи нормативно-правових актів, що регулюють зазначені відносини. Проведена класифікація актів законодавства, які умовно можна поділити на три групи: акти, що регулюють сучасні інформаційні відносини та використання інформаційно-комунікаційних/цифрових технологій в основних сферах суспільного життя; акти, присвячені переважно відносинам цифрової економіки, включно з електронною комерцією; акти, що регулюють різноманітні за галузевою належністю відносини і містять окремі норми щодо застосування згаданих технологій у відповідній сфері). Виявляються проблеми правового забезпечення цифрової економіки як на рівні нормативно-правового регулювання так і правозастосування.*

***Ключові слова:*** цифрові технології; цифрова економіка/ЦЕ; електронний бізнес; електронні реєстри; вдосконалення законодавства.

**Relevance of the research topic.** The concept of the digital economy and its components (e-services, e-money, e-payments, e-business, e-commerce, and online platforms, etc.) have powerfully and rapidly entered the everyday life of society and its members, having adjusted the form of establishing, changing and ending relationships in all major spheres of life, including economic.

In the Concept for the Development of the Digital Economy and Society of Ukraine for 2018-2020 (1), the digital economy (DE) is defined as an economy where the main factors of production are digital (electronic, virtual) data both numerical and text; an economy based on information, communication and digital technology, the rapid development and widespread of which are already affecting the traditional (physical analog) economy transforming it from a resource-consuming economy into a resource-creating economy. In such an economy, its main resource is data as it provides electronic communication for members in the DE. The key to its full development is digital skills and competences, and the main component of the DE and the determinant of economic growth, in general, is digitization of the real economy, its saturation with electronic and digital devices, facilities, systems and establishment of electronic and communicative exchange among them and entities operating in the field of economy.

The phenomena mentioned above, which have become commonplace in modern social life (but radically new to traditional social relationship), the development of civil society institutions with appropriate provision of their informative and communicative interaction with the state and the market have led to the formation of an information society and an economy of a new quality. Information services have become dominant, which, in its turn, ensures the rapid circulation of goods, work,

services, money through dissemination of information about them, their manufacturers, sellers and capabilities to order goods online without wasting time going shopping, visiting warehouses, offices of producers or sellers, and financial institutions to make a payment. The name of modern information and communication technology provided in digital format (digital technology) has ensured a new characteristic of the modern economy as *digital (DE)*. A business serving such an economy by improving the mentioned technology, ensuring their application, providing and using electronic services, producing goods/services for sale in electronic format (computer programmes, in particular) has been called electronic (e-business) so far at the theoretical level.

**Formulation of the problem.** Despite the considerable and undeniable benefits of the DE and e-business, the use of digital technology by fraudulent people for profit generates significant risks as the level of cyber-crime increases. This fact necessitates complex regulation of the relationship of the DE, which, on the one hand, should promote the efficient and fair use, and improvement of the mentioned technology, and on the other – create barriers to cyber crimes, fix a penalty for their commitment and the practical order of its application. Such a function is usually entrusted to the state. Still, state regulation is far behind the development of relationship of the DE, which has led to increased self-regulation, particularly by adopting relevant acts by authoritative participants in relevant markets. As an example, we can name Regulations jointly developed by public domain administrators and registrars with Hostmaster LLC (2, 3). Although the increasing role of self-regulation in today's economy is a positive phenomenon, however, the most important relationship should be regulated by the state as well as the boundaries and basic principles of self-regulation, the legal status of self-regulatory organizations. The global use of digital technology, the consequences of their use (both positive and negative – in case of misuse), the significant problems of legal regulation of quite complex DE relations, the need to solve them at the national and transnational levels determine the topicality and relevant directions of legal researches to find the most optimal ways to improve the regulatory and legal framework of the DE relations.

**Analysis of recent researches and publications.** Similar studies have already been initiated in Ukraine both on IT law in general (IT pravo, 2016), legal support for Internet relationship (Hetman, 2016) and the digital economy (Vinnyk, 2018), as well as on its (DE) individual elements (including e-services (Karpenko, Internet-posluha; Karpenko, Tsyvilno-pravovi), e-business (Topalevskyy, Dzyubina, Dzyubina, 2017), electronic administration of the value-added tax (Shapovalova, 2018), electronic auctions (Belyanevych, 2018), electronic money (Trubin, 2013), conflict/dispute settlement procedure, (Polatay, 2019; Vinnyk, 2019) etc. However, complexity and multiplicity of relationship in the DE field, their difference from the relationship of the analog economy (in terms of subject and object composition), features of regulation (including national and transnational, state and self-regulation, incl. contractual), the

risks of unfair or unqualified use of digital technology, and associated problems of liability and the consideration/resolution of conflicts/disputes need to be assessed in terms of the quality of legal support for these relationship identifying existing problems and working out the ways to solve them. All this provide evidence of the formation of a specific system of interconnected regulatory and legal mechanisms, which allow speaking about formation of, if not a new branch of law, but a sub-branch of business law. It includes most traditional institutions, but with an emphasis on digitalization of the regulated relations. It is likely that with the advent of digital technology and, accordingly, the dominance of virtuality in economic relationship (electronic form of communication, electronic resources, virtual enterprises, electronic means of protection, etc.) business law will regulate the whole spectrum of economic relations, regardless of the dominance of traditional (analog) form or a digital one.

**Presenting main material.** First, it is worth exploring the peculiarities of the DE relationship and their legal support. The traditional (analog) economy consists of business entities, entities of organizational and economic authority, and people who consume the material (usually in physical form) results of the activity of economic entities having the status of a legal entity or a natural person. The relationship between them are established through direct contacts (at fairs, in shops, when visiting the respective institution/organization, etc.) or by postal or courier communication exchanging the relevant documents that prove the signing of the contract in paper form with signatures and seals of the parties. Payment is made either in cash or through a bank (from the payer's bank account to the payee's bank account) by submitting a payment order.

The DE imposes an imprint on all components of the relationship: their subjects (one of them) may be the so-called virtual enterprises – not legally arranged (as corporate entities) group of subjects with or without entrepreneurial status, which jointly share, for example, common online store or online trading platform for selling their (self-made or purchased from a manufacturer or reseller) products. These online stores and online platforms are not entities as they are often considered, but sites that promote and sell goods, order work, or services and are often paid for using electronic payment systems. Contracts and documents exchanged by the parties when establishing a contact are usually in electronic form, although they can be printed at will. However, the electronic form of communication has its risks (in particular as regards: a) the establishment of identity of people involved in such relationship and their legal personality; b) dates and c) places of execution of agreements/contracts; d) the validity of the signatures of the parties; e) the threat of interference of unwanted and usually anonymous persons in such relationship, the consequences of such interference include leaking, distorting or destroying the information exchanged by the parties, withdrawing money by the attackers or transferring them to their account instead of bona fide party account), and ultimately, problems in resolving related conflicts/disputes, bringing to justice the perpetrators whose identification and search

can take years involving law enforcement agencies in different countries because of the transnational nature of digital relationship and the anonymity of some (usually unscrupulous) parties.

Legal support and, first of all, regulatory and legal framework plays an essential role in ensuring the efficiency and social orientation of the DE. At the same time, the rapid development of relationship in this area associated with the widespread use of information and communication (primarily digital) technology, has led to a significant gap in such regulation from the real state of relationship. Except for some other reasons, it happens due to the complexity of state regulation, including procedures for adopting legislative acts, to which business entities have responded by adopting some acts necessary for the market functioning (regarding domain registration (2; 3), in particular).

Despite the considerable difficulties of both objective and subjective nature, the legislation governing relationship in the field of the DE has nevertheless been formed in Ukraine, though with significant problems that remain to be resolved. Among them, first of all, we should mention the number of legislative acts and the scattered rules governing the relationship of the DE (they can be roughly divided into three blocks (Vinnyk, 2018, p. 38-48): the first is acts aimed at regulating modern information relations, informatization of the main spheres of public life (including economic), functioning of the information society, including Laws «On Information» (15), «On Information Protection in Information and Telecommunication Systems» of July 5, 1994 (16), «On Electronic Documents and Electronic Document Management» (17), «On Telecommunication» of November 18, 2003» (18), «On the Basic Principles of Development of the Information Society in Ukraine for 2007-2015» of January 09, 2007 (19), «On Protection of Personal Data» (20), «On Access to Public Information» (21), «On Basic Principles of Cybersecurity of Ukraine» (22) and others. The second group includes acts concerning various aspects of functioning of the DE as a component of the information society, particularly, Laws «On E-Commerce» (23), «On Electronic Confidential Services» (24), «On Payment Systems and Money Transfer in Ukraine» (25), «The Concept of Development of the Digital Economy and Society of Ukraine for 2018-2020 years» (1), and recently adopted decree «On Some Measures to Improve the Access of Individuals and Entities to E-Services» (26) and other acts. The third and the most numerous block includes the legislative acts that are not directly devoted to the DE, but some of them regulate the use of certain areas or certain entities of digital technology/electronic resources (almost all codes, laws «On State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations» (27), «On the Permit System in the Field of Economic Activity» (28), «On Joint Stock Companies» (29), «On the Cabinet of Ministers of Ukraine» (30), etc.)

The multiplicity of acts and the lack of a codification act that would comprehensively regulate the relationship arising in the field of the DE, raises a number of problems, among which there is the lack of unification of the conceptual

framework; uncertainty about the content of some concepts (in particular, e-business); the lack or unreasonableness of regulation of the DE important relationship (including the legal regime of online shops and online trading platforms; systems of organizational and economic authorities in the field of the DE and a clear division of functions among them concerning regulation, management and control of relationship in this field). Researchers on the legal aspects of the DE, practitioners, subjects of the DE market, and their self-regulatory organizations also point out other disadvantages of legal regulation.

Problems of regulatory and legal framework are complemented by problems of law enforcement: frequent cases of non-compliance with laws and regulations, including the Law «On Access to Construction, Transport, Electricity for the Development of Telecommunication Networks» (31) and the by-laws adopted in accordance with it causing protests of the participants of the telecommunications market and their authoritative self-regulatory organization – Internet Association of Ukraine (32). In addition, the problem of consumer protection in the DE is also compounded by the analog economy due to the so-called digital inequality of subjects providing electronic services (while having relevant digital experts) and common consumers, many of which do not have the relevant knowledge and skills, which often results in difficult situations caused not only by the mentioned circumstances, but also by the lack of effective mechanisms for consumer protection in the field of the DE.

One of the many problems with the legal support of a certain type of the DE relationship is those related to e-administration in the field of taxation and electronic registers. This problem has already been substantiated by the inconsistency in determining the reasons for the blocking control applied to particular operations, special economic regimes, or emergencies in which economic activity is carried out. A rejection of such a high level of blocking of the self-taxation results of business entities has been proposed, as well as the need to build an effective taxation system in Ukraine as a critical task for VAT collection (Shapovalova, 2018, p. 24–29). Considering the significant negative effects and their transnational nature as a result of regulatory deficiencies, the failure to comply with international obligations and, as a result, promotion of corruption offenses not only at the national but also at the global level, the problem of ensuring the establishment of an electronic system of contacts between taxpayers and the fiscal service bodies, including maintaining proper electronic registers, requires further thorough study.

The lack of a common legal framework in Ukraine for creation, operation and information interaction of state, municipal and other registers, as well as a common terminology framework and agreed requirements for creation, exchange, storage, correction and format of registry data causes a low level of the majority of registers. It creates obstacles to the technical and semantic interoperability of the registration of information required by economic entities for their activities, as well as to the state and public authorities to exercise control.

Ukraine's progressive intention to promote transparency and prevent corruption in the business sector has become joining the Global Register of Beneficial Owners (<https://register.openownership.org/>). The registry was created as a result of the London Anti-Corruption Summit, held on May 12, 2016, in London with the participation of Ukraine, which undertook the relevant commitments. In particular, as a civilized subject of the global information space, it committed to provide the specified Register with information of the Ukrainian Unified State Register of Legal Entities, Individual Entrepreneurs, and Public Organizations about the beneficial owners of Ukrainian companies.

Joining the Global Register of Beneficiary Owners allows our country sharing the information about the ultimate beneficial owners of companies in those countries that have also joined the Register. In total, it goes about open information about nearly 2 million companies and their beneficial owners. By geography, these are companies and beneficial owners from Afghanistan, Australia, the United Kingdom, Norway, the Netherlands, France, Ireland, and other countries (33).

Such an exchange contributes to exposing and counteracting offenses committed by the use of illegal tax evasion schemes through offshore jurisdictions. Hiding information about real business owners is a factor of counteracting the disclosure of money laundering schemes. The result of such counteraction (in combination with other factors) is huge volumes of the shadow economy of Ukraine (for example, in 2018, it was 1.1 trillion UAH. (Kryshko).

Therefore, an important and timely step should be considered an amendment to the Business Code of Ukraine, namely, Article 64-1, entitled «Ultimate Beneficial Owner (Controller) of the Enterprise» that contains a rule on the obligation to regularly update and store information about it, and provide the state registrar with this information in cases and on conditions stipulated by the law. Instead, as of May 2019, these requirements are being violated by most economic entities. Thus, as of August 16, 2018, 310 339 entities out of 1 338 823 registered legal entities in the Unified State Register provided information about the ultimate beneficial owner, which is 23.2% of the total number of the registered entities (34). And the fiscal service experts expose numerous facts of misrepresentation of information about the ultimate beneficial owner (controller) even among them. It occurs by submitting incomplete, false, deliberately untrue information. The deadline for submitting information is also systematically violated.

Such a phenomenon is dangerous for the DE and the society as a whole: if the public registers of the final beneficial owner are not submitted, or distorted, no signal of a true socio-economic result of the economic activity appears; but when distorted information about the ultimate beneficial owner (controller) is transmitted to the Global Register of Beneficiary Owners, Ukraine becomes a breacher of the terms of the Memorandum (33), under which it has committed to facilitate public monitoring through the free use and analysis of data of businesses beneficial owners registered in Ukraine.

Therefore, violation of a business entity's obligation to publicly disclose the ultimate beneficial owner, along with other adverse effects, distorts the idea of the proper functioning of digital resources. Therefore, it is time to discuss the conceptual vision of a mechanism for verifying information about ultimate beneficial owners, which includes proposals for legislation and a model for developing IT solutions for aggregation and consolidation of existing services.

In July 2019, a roadmap for the introduction of a mechanism for verifying the credibility of information about the ultimate beneficial owners of «Up to 100% True» was signed. The signatories were: Ministry of Justice of Ukraine, Ministry of Finance of Ukraine, State Financial Monitoring Service of Ukraine, State Fiscal Service of Ukraine, National Bank of Ukraine, National Agency for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes, State Agency for Electronic Issues Governance of Ukraine, NGO «National Information Systems», Government Office for Coordination on European and Euro-Atlantic Integration, NGO «Together Against Corruption», Transparency International Ukraine, the Anti-Corruption Center, Advisory Fund for EU Association of Ukraine and the International Renaissance Foundation (Kryshko).

The monitoring function would optimize the existence of economic and legal liability in the mechanism of verifying information on beneficial owners.

Scientists have already substantiated the feasibility of recognizing such actions as misleading information about the ultimate beneficial owner (controller) as an offense. The ultimate beneficial owner (controller) or member of the governing body, the body performing the functions of control and/or supervision, and other authorized individuals are recognized as subjects of their implementation and, therefore, subjects of the offense (Solodchenko, 2018, p. 5).

Instead, it is the responsibility of the entity that has breached the obligation to publicly disclose the ultimate beneficial owner, and not only its beneficial owner or the authorized person to perform management functions of natural persons.

**Conclusion.** Given the democratic foundations of our country provided in the Constitution, its orientation on the development of civil society institutions (36), digitalization of the basic spheres of social life (1), overcoming digital inequalities (1), and the need for renewal (as noted by Mark Paul) of analog legislation in order to cope with the DE, it is advisable to optimize the system of legislation on such an economy by adopting a corresponding codified act (the DE Code, or Law) (6, p. 183), in which to establish adequate (such as to meet the mentioned tendencies of social and, above all, economic development) provisions, in particular concerning:

- definition of the basic concepts of the DE (including e-business, e-services, e-contract, e-resources, e-registers), setting features and types of e-business, general requirements to the subjects of such business, including responsibilities (primarily due to the use of digital technology), including information about: a) protecting customer information and preventing it from being distributed and misused; b) publishing



information about the implementation of customers' digital rights in the relevant field and regulations (including local ones) governing related relationships on the website of such entity, etc.;

- the legal regime of e-resources (including e-commerce, online trading platform), rights, obligations, and responsibilities of the persons using them;
- systems of bodies authorized in the field of the DE with differentiation of their assigned functions, as well as obligations (a) to publish information as for their consumers' rights (including digital ones) in the respective field and mechanisms for their protection, as well as regulatory acts governing relationship in this field on their own website; (b) to advise consumers on their rights and how to protect them in case of a breach;
- the procedures, including: (a) conclusion of e-contracts, (b) provision of e-services, (c) maintenance of e-registers, (d) prosecution;
- forms and boundaries of self-regulation in the field of the DE, criteria for self-regulatory organizations to which the state may delegate specific functions for regulation in the field of the DE, as well as the procedure for adopting and the role of the Rules of Business Ethics in the relevant areas of the DE;
- means of overcoming digital inequalities in the field of the DE, including the duty of authorities and entities in certain areas of the DE to provide advice to consumers and other recipients of e-services how to use digital resources to obtain such services and/or information about them (for example, in the form of thoughtful step-by-step instructions designed and understood by a common consumer);
- legal mechanisms of protection of the digital rights of participants in the DE relationship in case of violation and, accordingly, of the procedure of conflict/disputes settlement in the field of the DE, including various procedures: pre-trial, alternative (including online procedures (Polatay, 2019), judicial (with focus on the specifics of cases involving consumers, including the priority and shortened terms of such cases, privileges for payment of court fees);
- the peculiarities of the use of electronic resources and the status of e-business entities in certain areas of the DE.

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