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**Cross-Border Retail Settlements: Features of Legal Regulation and Prospects
for the Creation of International Payment Systems**

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5.1.3. Private Law (Civilistic) Sciences

GENERAL DESCRIPTION

Research rationale. The thesis research is devoted to the analysis of the legal regulation of cross-border retail settlements, as well as the prospects for the creation of international payment systems for such settlements by Russian entities in the face of increasing sanctions pressure. In general, cross-border settlements are the most difficult category in payment theory, since they require the involvement of a large number of participants and the development of a comprehensive economic, technological and legal infrastructure. Currently, issues related to improving the procedure for settling cross-border retail payments are under the close attention of the world community, new payment infrastructures are being developed and implemented, standards and unified rules are being tested, new legal mechanics are proposed to simplify the procedure for such settlements and make it accessible to more users of payment services.

However, it becomes obvious that due to the political situation, globalization of the international payment market should not be expected in the near future, and, accordingly, there will be no call for a number of planned initiatives. Moreover, new challenges are emerging for the Russian payment market in terms of cross-border retail settlements, since the Russian Federation is actually cut off from part of the previously available international payment infrastructure and urgently needs to look for alternative ways to develop its own payment market in order to provide Russian entities with access to appropriate mechanisms for cross-border payments.

Taking into account these circumstances, the relevance of the scope of this research is associated with a number of factors, including:

1. Significant impact of cross-border retail settlements on international stream of commerce. At the same time, despite the widespread use and demand for this type of settlements, they still remain expensive, slow and unpredictable.
2. Adoption by the Group of Twenty (G20) of the Roadmap for Enhancing Cross-border Payments (*Enhancing Cross-border Payments: Stage 3 roadmap*), the provisions of which have not yet been duly weighed in the national scientific literature,

including in the context of the development of international standards for the legal regulation of cross-border settlements.

3. A paradigm shift from the path of globalization of infrastructure for cross-border retail settlements to the path of regionalism, a gradual transition to settlements in national currencies, the formation of a trend towards "de-dollarization" of the economy in order to combat the consequences of economic sanctions of "unfriendly" states.

4. Improvement of national legislation regarding the processing of cross-border payments and the development of appropriate payment systems, testing by the Bank of Russia of patterns of interaction with foreign payment systems, in particular, based on the Faster Payments System (FPS). Development of international payment infrastructure with friendly countries, for example, China and India, as well as within the EAEU.

5. Small number of legal publications in both foreign and national scientific literature, considering the specifics of the legal regulation of cross-border retail settlements both at the international and national levels.

6. Scientific interest in the study of the possibility of creating new types of international payment infrastructures, for example, international closed-loop payment systems. Studying the legal possibilities for Russian entities to use such infrastructures to carry out cross-border settlements with counterparties from friendly states and within the EAEU.

Research mastery. This topic has not been studied properly from a legal point of view, and there are no comprehensive studies in the national legal science on the specifics of legal regulation of cross-border retail settlements. At the same time, there are studies in which the authors elaborated separate points related to the regulation of the national payment market, the status of the payment market actors, and the peculiarities of international banking. Among them are the papers of V. Yu. Belousov¹, M. V. Demchenko

¹ *Usoskin V.M., Belousova V.Y.* Payment systems and organization of settlements in a commercial bank: Textbook. M.: Publishing House of the Higher School of Economics, 2012. 192 p. [*V.M. Usoskin, V.Yu. Belousova* Platyozhnye sistemy i organizatsiya raschyotov v kommercheskom banke: uchebnoye posobiye. M.: Izdadel'skiy dom Vysshey Shkoly Ekonomiki, 2012. 192 s.]

², L.G. Yefimova³, S.V. Krivoruchko⁴, A.Ya. Kurbatov⁵, P.A. Tamarov⁶, O.A. Tarasenko⁷, G.V. Petrova⁸, V.M. Usoskin, Ye.G. Khomenko⁹. Individual studies can be

²*Demchenko M.V., Simayeva Ye.P.* Harmonization of the EAEU legislation in the field of financial technologies in 2020 // Economics. Taxes. Law. 2020. No. 13(1). P. 141-148. [*M.V. Demchenko, Ye.P. Simayeva* Garmonizatsiya zakonodatelstva EAES v sfere finansovykh tekhnologiy v 2020 godu // Ekonomika. Nalogi. Pravo. 2020. No. 13(1). S. 141—148.]

³ Banking law: textbook for bachelors / ed. by L.G. Yefimova, D.G. Alekseyeva. M.: Prospect, 2021. 608 p.; *Yefimova L.G.* Separate problems of the theory of non-cash settlements // Journal of the Kutafin University (MSLA). 2016. No. 2. Pp. 28-57; *Yefimova L.G.* Bank deposit and bank account agreements: monograph. M.: Prospect, 2018. 432 p., etc. [Bankovskoye pravo: uchebnik dlya bakalavrov / ed.-in-chief L.G. Yefimova, D.G. Alekseyeva. M.: Prospekt, 2021. 608 s.; *L.G. Yefimova* Otdelnye problemy teorii beznalichnykh raschyotov // Vestnik Universiteta imeni O. E. Kutafina (MGUA). 2016. No. 2. S. 28—57; *L.G. Yefimova* Dogovory bankovskogo vklada i bankovskogo schyota: monografiya. M.: Prospekt, 2018. 432 s., etc.]

⁴ *Krivoruchko S.V.* Payment systems: textbook. M.: Market DS, 2010. 176 p.; *Krivoruchko S.V., Lopatin V.A.* National payment system: structure, technology, regulation. International experience, Russian practice. Moscow: KNORUS: TsIPSiR, 2013. 456 p.; *Krivoruchko S.V., Semiryad A.A.* Regulating systemically important financial institutions: problems of identification // Management in credit organization. 2012. No. 3. Pp. 31-43. [*S.V. Krivoruchko* Platyozhnye sistemy: uchebnoye posobiye. M.: Market DS, 2010. 176 s.; *S.V. Krivoruchko, V.A. Lopatin* Natsionalnaya platyozhnaya sistema: struktura, tekhnologii, regulirovaniye. Mezhdunarodny opyt, rossiyskaya praktika. M.: KNORUS: TsIPSiR, 2013. 456 s.; *S.V. Krivoruchko, A.A. Semiryad* Reegulirovaniye sistemno znachimyykh finansovykh institutov: problemy identifikatsii // Upravleniye v kreditnoy organizatsii. 2012. No. 3. S. 31—43.]

⁵ *Kurbatov A.Ya.* Legal regulation of settlements in the Russian Federation // Economy and law. 2000. No. 7. Supplement. Pp. 3-64; *Kurbatov A.Ya.* Problems of application of the legislation on consumer rights protection in the banking sphere created by judicial and arbitration practice // Entrepreneurial Law. Supplement "Business and law in Russia and abroad". 2013. No. 3. Pp. 36-39; *Kurbatov A.Ya.* Non-personalized electronic means of payment: procedure and problems of use // Banking Law. 2019. No. 2. Pp. 46-51, etc. [*A.Ya. Kurbatov* Pravovoye regulirovaniye raschyotov v Rossiyskoy Federatsii // Khozyaystvo i pravo. 2000. No. 7. Prilozheniye. S. 3—64; *A.Ya. Kurbatov* Problemy primeneniya zakonodatelstva o zashchite prav potrebiteley v banovskoy sfere, sozdannyye sudebno-arbitrazhnoy praktikoy // Predprinimatelskoye pravo. Prilozheniye "Biznes i pravo v Rossii i za rubezhom". 2013. No. 3. S. 36—39; *A.Ya. Kurbatov* Nepersonifitsirovannyye elektronnyye sredstva platezha: poryadok i problemy ispolzovaniya // Bankovskoye pravo. 2019. No. 2. S. 46—51, etc.]

⁶ *Tamarov P.A.* Prospects of the EAEU payment system. Report at the First Eurasian Analytical Forum // Greater Eurasia: Development, Security, Cooperation. 2020. No. 3-1. Pp. 231-236; *Tamarov P.A.* Strategy of harmonization of payment relations within the framework of international associations // Banking Law. 2017. No. 3. Pp. 50-55. [*P.A. Tamarov* Perspektivy platyozhnoy sistemy EAES. Report at the First Eurasian Analytical Forum // Bolshaya Evraziya: razvitiye, bezopasnost, sotrudnichestvo. 2020. No. 3—1. S. 231—236; *P.A. Tamarov* Strategiya garmonizatsii platyozhnykh otnosheniy v ramkakh mezhdunarodnykh obyedineniy // Bankovskoye pravo. 2017. No. 3. S. 50—55.]

⁷ *Tarasenko O.A.* Payment system of the Russian Federation // Actual problems of the Russian law. 2008. No. 1. Pp. 24-28; *Tarasenko O.A.* On the category of "payment service" // Journal of entrepreneurial and corporate law. 2016. No. 3. Pp. 26-29; *Tarasenko O.A.* Digital transformation of the banking and payment systems of Russia // Entrepreneurial Law. 2019. No. 3. Pp. 3-10, etc. [*O.A. Tarasenko* Platyozhnaya sistema Rossiyskoy Federatsii // Aktualnye problemy rossiyskogo prava. 2008. No. 1. S. 24—28; *O.A. Tarasenko* O kategorii "platyozhnaya ushuga" // Zhurnal predprinimatelskogo i korporativnogo prava. 2016. No. 3. S. 26—29; *O. A. Tarasenko* Tsifrovoye

found in the thesis works of G.Z. Mansurov¹⁰, A.A. Soluyanov¹¹, A.O. Shoniya¹². In addition, the problems of cross-border settlements and payment systems are partially addressed in monographic studies, in particular, the monographs of O.A. Tarasenko and Ye.G. Khomenko¹³, as well as A.V. Shamrayev¹⁴.

It should be noted that the topic of legal regulation of cross-border retail settlements has been studied in the writings of foreign scientists, which may be due, among other things, to the developed payment infrastructure in the USA and the EU. The

preobrazovaniye bankovskoy i platyozhnoy sistem Rossii // *Predprinimatelskoye pravo*. 2019. No. 3. S. 3—10, etc.]

⁸ Foreign banking law (banking law of the European Union, France, Switzerland, Germany, the USA, the PRC, the UK): monograph / edited by L.G. Yefimova. M.: Prospect, 2018. 656 p.; *Petrova G.V.* International payment and settlement law: modern trends of development // *Problems of economics and legal practice*. 2017. No. 3. Pp. 105-108. [*Zarubezhnoye bankovskoye pravo (bankovskoye pravo Evropeyskogo Soyuz, Frantsii, Shveytsarii, Germanii, SShA, KNR, Velikobritanii)*: monografiya / edited by L.G. Yefimova. M.: Prospekt, 2018. 656 p.; *G.V. Petrova Mezhdunarodnoye platyozhno-raschyotnoye pravo: sovremennyye tendentsii razvitiya // Problemy ekonomiki i yuridicheskoy praktiki*. 2017. No. 3. Pp. 105—108.]

⁹ *Khomenko Ye.G.* National payment system as a guarantee of sovereignty and economic security of Russia // *Entrepreneurial Law*. 2015. No. 4. Pp. 5-12; *Khomenko Ye.G.* Conceptual principles of the national payment system of Russia // *Law and Economics*. 2015. No. 6(328). Pp. 17-22; *Khomenko Ye.G.* On the development of electronic payment instruments used in banking activities in Russia and EAEU countries // *Banking Law*. 2020. No. 1. Pp. 19-24, etc. [*Ye.G. Khomenko* Natsionalnaya platyozhnaya sistema kak garantiya suvereniteta i ekonomicheskoy bezopasnosti Rossii // *Predprinimatelskoye pravo*. 2015. No. 4. S. 5—12; *Ye.G. Khomenko* Kontseptualnye printsipy natsionalnoy platyozhnoy sistemy Rossii // *Pravo i ekonomika*. 2015. No. 6(328). S. 17—22; *Ye.G. Khomenko* O razvitiy elektronnykh platyozhnykh instrumentov, ispolzuyemykh v bankovskoy deyatelnosti v Rossii i stranakh EAES // *Bankovskoye pravo*. 2020. No. 1. S. 19—24, etc.]

¹⁰ *Mansurov G.Z.* International settlement transactions: international legal and national regulation: Thesis of Doctor of Law. SPb., 2012. 372 p. [*G.Z. Mansurov* Mezhdunarodnye raschyotnye sdelki: mezhdunarodno-pravovoye i natsionalnoye regulirovaniye: Dis. ... dokt. yurid. nauk. SPb., 2012. 372 s.]

¹¹ *Soluyanov A.A.* International experience of functioning of payment systems and Russian practice: Thesis of Candidate of Economic Sciences. M., 2008. 198 p. [*A.A. Soluyanov* Mezhdunarodny opyt funktsionirovaniya platyozhnykh sistem i rossiyskaya praktika: Dis. ... kand. ekon. nauk. M., 2008. 198 s.]

¹² *Shoniya A.O.* Problems of legal regulation of cross-border correspondent relations of commercial banks: Thesis of Candidate of Legal Sciences. M., 2015. 142 p. [*A.O. Shoniya* Problemy pravovogo regulirovaniya transgranichnykh korrespondentskikh otnosheniy kommercheskikh bankov: Dis. ... kand. yurid. nauk. M., 2015. 142 s.]

¹³ *Khomenko Ye.G., Tarasenko O.A.* National payment system of the Russian Federation and its elements: monograph. M.: Prospect, 2017. 176 p. [*Ye.G. Khomenko, O.A. Tarasenko* Natsionalnaya platyozhnaya sistema Rossiyskoy Federatsii i yeyo elementy: monografiya. M.: Prospekt, 2017. 176 s.]

¹⁴ International and foreign financial regulation: institutions, transactions, infrastructure: monograph: in 2 parts / edited by A.V. Shamrayev. M.: KNORUS: TsIPSIR, 2014. Part 2. 640 p. [*Mezhdunarodnoye i zarubezhnoye finansovoye regulirovaniye: instituty, sdelki, infrastruktura: monografiya: v 2 ch.* / edited by A.V. Shamrayev. M.: KNORUS: TsIPSIR, 2014. Ch. 2. 640 s.]

foreign doctrine in this field is represented by such researchers as C. Benson¹⁵, S. Goldberg¹⁶, A. Haldane, R. Jones, S. Loftesness¹⁷, S. Millard, M. Nakajima¹⁸, A. Nacamuli¹⁹, D. Rambure, V. Saporta²⁰.

The theoretical basis of the research was the writings of national scientists in the field of conflict-of-laws regulation of settlement obligations (A.V. Asoskov, M.P. Bardina, V.A. Belov, M.M. Boguslavskiy, A.P. Vershinin, N.G. Vilkova, V.V. Vitryanskiy, L.N. Galenskaya, G.K. Dmitriyeva, N.G. Doronina, I.V. Yeliseyev, N.Yu. Erpyleva, A.N. Zhiltsov, V.P. Zvekov, I.S. Zykin, Ye.V. Kabatova, V.A. Kanashevskiy, A.S. Komarov, S.N. Lebedev, L.A. Lunts, M.V. Mazhorina, A.L. Makovskiy, V.A. Musin, T.N. Neshatayeva, M.G. Rosenberg, N.G. Semilyutina, Ye.A. Sukhanov, I.O. Khlestova, etc.).

The empirical basis of the research was the recommendations of international organizations regarding the regulation of cross-border retail settlements and the establishment of general principles for regulating such settlements, the provisions of local regulations of leading payment systems, the national legislation of the Russian Federation, the USA and the EU, as well as applicable judicial practice.

Objective of the dissertation research is to develop a holistic model of legal regulation of cross-border retail settlements, as well as to assess the legal possibility of creating and operating international closed-loop payment systems for cross-border retail settlements involving Russian entities.

The designated objective involves setting the following **research tasks**:

- Presenting a general legal description of the concepts of "monetary obligation" and "settlement"; distinguishing between two main types of settlements – wholesale

¹⁵ *Benson C.* Global Payments and the Fintech Innovations Changing the Industry. Glenbrook Partners, 2020. 97 p.

¹⁶ *Goldberg S.* The Field Guide to Global Payments. GF Books, 2022. 208 p.

¹⁷ *Benson C., Loftesness S., Jones R.* Payment Systems in the U.S. Third Edition: A Guide for the Payment Professionals (3rd ed.). Glenbrook Partners, 2017. 202 p.

¹⁸ *Nakajima M.* Payment System Technologies and Functions: Innovations and Developments. Business Science Reference, 2011. 255 p.

¹⁹ *Rambure D., Nacamuli A.* Payment Systems: From the Salt Mines to the Board Room. Palgrave Macmillan, 2008. 235 p.

²⁰ *Millard S., Haldane A., Saporta V.* (eds.) The Future of Payment Systems. Routledge, 2014. 288 p.

and retail; establishing the legal essence of the cross-border settlement chain and identifying its impact on the applicable legal arrangements for regulating settlement relations;

- Determining the legal status of individual parties to the cross-border retail settlements; determining the law applicable to the regulation of rights and obligations of individual parties to a single cross-border settlement transaction;
- Proposing a detailed description of the existing types of international payment infrastructures for cross-border retail settlements; identifying the key legal risks specific to each type of infrastructure;
- Studying international and the most relevant national models of legal regulation of payment infrastructure for cross-border retail settlements; exploring the features of the Single Euro Payment Area (SEPA) project;
- Identifying the legal nature of payment systems, as well as legal risks and prospects for the creation of international closed-loop payment systems in order to enable Russian entities to conduct cross-border retail settlements without the negative impact of economic sanctions;
- Formulating proposals regarding changes in national legislation, including in the field of legal regulation of the payment landscape in order to develop a cross-border payment infrastructure that could ensure uninterrupted business activities by interested Russian entities.

The subject of the research is legal institutions related to the regulation of cross-border retail settlements, relevant doctrinal sources and law enforcement practice.

The scope of the research is the rules of various legal nature governing cross-border retail settlements.

Research methodology and methods. During the research, general scientific methods (analysis, synthesis, deduction, induction) were widely used, without which no scientific legal research can be made, as well as special legal methods (historical legal, comparative legal, legalistic). The historical legal method, in particular, was used to analyze the development of Russian and foreign payment legislation, as well as to study the main concepts and institutions of payment law in their evolution. The comparative

legal method was used in a detailed study of the modern legal regulation of cross-border retail settlements and the corresponding payment infrastructures in Russia and abroad (based on the legislation of the USA, EU, China, and the EAEU countries). The author also turned to statistical methods of analysis, which allow to systematize and classify data by types of payments, their main participants and payment infrastructures in various countries to develop some forecasts for their further improvement. The method of legal modeling has found application in the course of design the various types of international payment systems (infrastructures) for the improvement and development of mechanisms for carrying out cross-border retail settlements by Russian individuals

The research has full **academic novelty**, since no thesis research on this topic has been conducted in the national science before. The academic novelty of the research consists of the fact that the author proposed a comprehensive concept of cross-border retail settlement as a multi-component institution, which, in turn, predetermines the features of the legal status of persons, participating in the settlement, as well as contractual relationships between them in various jurisdictions. The author conducted an in-depth study of modern international regulation, as well as Russian and foreign legislation governing cross-border retail settlements and related international payment infrastructures, as a result of which options for improving domestic payment legislation were proposed in order to expand opportunities for Russian individuals to freely and most profitably carry out cross-border retail settlements in the face of increasing sanctions pressure.

The following scientific points are submitted for defence:

1. Cross-border settlement is a cumulative process that includes all the variety of settlement transactions and settlement operations mediating the fulfillment of the debtor's monetary obligation to the creditor in a situation where financial institutions serving the payer and the payee are within different jurisdictions. One of the key characteristics of cross-border settlements is their classification into wholesale and retail settlements. Cross-border retail settlement should be understood as a general cumulative process that includes all the variety of settlement transactions and settlement operations mediating the fulfillment of the debtor's monetary obligation to the creditor incurred as

a result of such entities effecting private transactions for the payment for goods, works and services, in a situation where financial institutions serving the payer and the payee are within different jurisdictions. Legal regulation of retail settlements has its own specifics, which differ from wholesale settlements, which include settlements carried out by special entities in the international interbank market.

2. Cross-border retail settlement is characterized by a complex multi-layer structure that includes a wide range of parties from various jurisdictions. Cross-border retail settlements can be divided into the following main types: (i) international money transfers that do not mediate commercial transactions (*person-to-person payments*); (ii) commercial settlements made by individuals as customers and commercial organizations as suppliers of goods and services (*person-to-business payments*); (iii) settlements between commercial organizations for goods, works and services that mediate all international trade (*business-to-business payments*).

3. The structure of cross-border retail settlement consists of two levels: at the first level of cross-border retail settlement (*front-end arrangements*), the interaction of payment service providers with payment service users takes place; at the second level (*back-end arrangements*), the interaction of payment service providers, including those being within different jurisdictions, is implemented with one another. At each of these levels of interaction between parties to cross-border retail settlement, significant legal problems arise that require detailed legal analysis and resolution.

4. The first level of interaction between parties to cross-border retail settlements influences the determination of the legal status of the payment service user and the payment service provider, as well as the specifics of the legal regulation of the settlement deal concluded between them. Currently, in developed countries, the dominant approach is that the legal status of the payment service user or provider in cross-border retail settlements is determined in accordance with the norms of the law of the country where such an entity is located. Legal relations occurring in connection with the settlement are executed in the form of a civil contract, the type of which is directly depend on the specific conditions of the settlement. At the same time, regardless of the form and content of such a contract chosen by the parties, *lex voluntatis (autonomy of will)* acts as

a general point of contact to the specified contractual relations, and if the parties have not chosen the law to be applied, then it will be determined according to *lex connectionis fermitatis* (law of the closest connection) in the form of *lex venditoris* (law of the vendor's country). The latter, in the context of cross-border retail settlement, involves the application of the law of the country where the main place of business of the entity carrying out the characteristic performance under the contract, *i.e.* the payment service provider, is located.

5. The second level of cross-border retail settlement is the most complex in the payment chain and affects the choice of the legal regulator of the following groups of relations: standardization of financial information transmission channels based on relevant international standards, cross-border clearing and settlement itself, supervision of the activities of international entities involved in conducting settlement transaction. The main regulator of these legal relations is *soft law*, which is being developed by relevant international organizations such as the Bank for International Settlements – BIS, the Financial Stability Board – FSB, the International Organization for Standardization – ISO, and the Group of Twenty (G20). The adoption of the 2020 Roadmap by the Group of Twenty (G20) marked a new milestone in the elaboration of the legal framework for cross-border retail settlements both globally and regionally.

6. The specifics of cross-border retail settlement as a multicomponent institution determines the formation of specific payment infrastructures in the international payment market, which allow market actors to take into account, on the one hand, the requirements of the local legislation of the countries where the settlement parties are located and, on the other hand, to resolve certain issues within the framework of bilateral and multilateral agreements of such entities among themselves. These infrastructures include: (i) payment infrastructure based on international correspondent banking relations; (ii) interdependent payment infrastructures; (iii) closed-loop payment infrastructure; (iv) *peer-to-peer* payment infrastructure (intermediary free).

7. The national legal regulation of the payment infrastructure for cross-border retail settlements is of particular importance due to the limited number of universal international sources of regulation. An analysis of the legislation of Russia, the USA and

the EU has shown that to date only the EU has managed to achieve real harmonization and interoperability of its payment infrastructure within the framework of the SEPA project. This became possible due to the transition of the EU member states to settlements in the single currency. The legislation of Russia and the legislation of the USA demonstrate a different trend – these systems of law mainly develop legal regulation for the mechanisms of international correspondent banking and interdependent payment infrastructures. It is proposed to connect foreign counterparties to national payment infrastructures in order to avoid conflicts related to the passage of settlement through several jurisdictions. In both countries, there are limited mechanisms for the interoperability of systems, but the applicable legislation does not always properly reflect the level of unification of payment systems and requires further development.

8. Modern realities pose new challenges to the national legislator, including in terms of creating an appropriate payment infrastructure for cross-border retail settlements of Russian entities in the face of sanctions pressure from unfriendly states. Taking into account the development of new technologies in the field of payments (blockchain, digital currencies, Open API), it becomes possible to create special types of payment infrastructures, namely international closed-loop payment systems and *peer-to-peer* payment systems. An analysis of the interaction of the payment infrastructure of the Russian Federation and China based on the Russian FPS and the Chinese CIPS shows that at the moment the creation of interdependent national payment infrastructures for cross-border retail settlements is not optimal. In this situation, the solution may be the creation of international closed-loop payment systems within the EAEU. Detailed elaboration of the procedure for the creation and functioning of the EAEU international payment system should be carried out on the basis of the guidelines of the BIS and the FSB, the 2020 Roadmap adopted by the G20, as well as the practical experience of EU countries in implementing the SEPA regional payment infrastructure project.

The theoretical relevance of the research lies in the fact that the conclusions drawn in the thesis expand the scope of scientific knowledge about the peculiarities of legal regulation of cross-border retail settlements and approaches to the creation of international payment systems. The results of the research make a significant contribution

to the development of theoretical foundations in the field of substantive and conflict of laws regulation concerning the rights and obligations of participants in cross-border settlements. Moreover, the results obtained can become a starting point for further improvement of theoretical concepts and solutions aimed at harmonization and unification of legal norms governing the creation and operation of international payment infrastructures designed to ensure efficient and secure cross-border settlements on a bilateral and multilateral basis.

Practical relevance of the research. The results of the research can be used for further scientific work, as well as in the work of banks and other financial institutions that are active payment market actors, which are involved in cross-border payment transactions. In addition, the results of the research can be used to further improve the legislation of the Russian Federation on the national payment system in terms of its further harmonization with international standards, as well as in the development of its own advanced models of payment infrastructures for cross-border retail settlements.

Validity and evaluation of the thesis results. The thesis was completed in the Department of Legal Regulation of Business of the Faculty of Law of the National Research University Higher School of Economics. Certain points of the thesis research are reflected in scientific articles published by the author. In addition, the results of the research were evaluated during scientific conferences: XVII International Scientific and Practical Conference (Kutafin Readings) of the Kutafin Moscow State Law University (MSLA) and XX International Scientific and Practical Conference of the Faculty of Law of the Lomonosov Moscow State University (MSU), November 26-29, 2019, Moscow, the report on the topic: "Cross-border retail payments: Key problems and ways to solve them in the digital era"; IV International Scientific and Practical Conference "Theoretical and practical aspects of the development of modern science", July 3-4, 2012, Moscow, the report on the topic: "Economic-Legal Nature and Functions of Money. Role of Money in Payment Systems Origin"; as well as during the implementation of a special author's academic discipline "Legal aspects of international settlements" (previously also a workshop "Legal regulation of international settlement transactions"), taught at the Faculty of Law of the National Research University Higher School of Economics

(educational program "Jurisprudence") from 2017 to 2024. The validity of the results obtained is ensured by the use of both Russian and foreign doctrinal sources, regulatory documents and judicial practice.

The structure of the thesis is determined by its objective and tasks and consists of an introduction, three chapters comprising nine paragraphs, a conclusion and a reference list.

MAIN CONTENT

The **introduction** reflects the relevance of the research topic, the mastery thereof in national and foreign literature, and identifies the objective and tasks of the research. In addition, the introduction contains an indication of the subject, scope and applied research methods, as well as a justification for the academic novelty of the points submitted for defence. The introduction reveals the theoretical and practical relevance of the thesis research, as well as provides information on the evaluation of the results obtained during it.

The first chapter "General theoretical aspects of legal regulation of cross-border retail settlements" consists of three paragraphs. *The first paragraph* of the first chapter is devoted to the analysis of the concept and legal nature of cross-border settlements, as well as the main differences between retail and wholesale settlements, and the segmentation of the international payment market. This paragraph contains an analysis of such basic concepts for the theory of payment legislation as "monetary obligation", "settlement transaction", "settlement banking operation", "money transfer", "payment service". The evolution of these concepts is studied in historical retrospect, as well as using the example of modern legislation in developed countries such as Russia, the USA and EU member states. The first paragraph offers the author's definition of the term "cross-border settlement", which can be understood as a cumulative process that includes all the variety of settlement transactions and settlement operations mediating the fulfillment of the debtor's monetary obligation to the creditor in a situation where financial institutions serving the payer and the payee are within different jurisdictions.

The first paragraph of the first chapter contains a description of the key features of cross-border settlements, which make it possible to classify them into retail and wholesale payments. There are several main types of retail settlements, mainly: (i) international money transfers that do not mediate commercial transactions (*person-to-person payments*); (ii) commercial settlements made by individuals as customers and commercial organizations as suppliers of goods and services (*person-to-business payments*); (iii) settlements between commercial organizations for goods, works and services that mediate all international trade (*business-to-business payments*).

The *second paragraph* of the first chapter examines the parties to cross-border retail settlements, as well as the specifics of their legal status. Thus, parties to cross-border retail settlements can be divided into two main groups: (i) payment service users, that is, payers and payees, and (ii) entities that help "transfer" funds from the payer to the payee (hereinafter — payment service providers or PSP). These parties to settlements interact with each other at two levels, namely: interaction between a payment service user and a PSP (*front-end arrangements*) and interaction between a PSP and a PSP (*back-end arrangements*). Legal issues arise at each of the specified levels of interaction.

The second paragraph describes in detail the first level of interaction, where the key issue is to determine the legal status of the payment service user and the payment service provider, as well as the specifics of the legal regulation of the settlement deal concluded between them. Currently, in developed countries, a traditional approach is that the legal status of the payment service users or PSPs in cross-border retail settlements is determined in accordance with the norms of the law of the country where such entities are located. This is especially relevant for PSPs, the activities of which are subject to prudential supervision by regulatory authorities. Legal relations between the parties occurring in connection with the cross-border retail settlement are executed in the form of an appropriate civil contract, the type of which may vary depending on the specific conditions of the settlement. *Lex voluntatis (autonomy of will)* acts as a general point of contact to the specified contractual relations, and if the parties have not chosen the law to be applied, then it will be determined according to *lex connectionis fermitatis (law of the closest connection)* in the form of *lex venditoris (law of the vendor's country)*. The

latter, in the context of cross-border retail settlement, involves the application of the law of the country where the main place of business of the entity carrying out the characteristic performance under the contract, *i.e.* the payment service provider, is located.

The third paragraph of the first chapter is devoted to a detailed analysis of the second level of interaction between parties to cross-border retail settlements, which examines the payment infrastructure necessary for such settlements. Among the main legal problems that arise at this level, the following can be distinguished:

- Issues of legal regulation of the creation and implementation of unified and secure channels for the transfer of financial and payment information between all parties to cross-border retail settlement;
- Issues of legal regulation of the unified clearing procedure, as well as the final *settlement* obligation of the parties;
- Legal aspects of currency conversion during the implementation of the cross-border retail settlement procedure, the concept of settlement currency of payment;
- Legal aspects of the PSP liquidity management, including ensuring the financial stability of all parties to cross-border retail settlement within the framework of individual payment systems, in which such PSPs are participants.

The specified legal problems have been partially solved in international and national practice, but complete unification has not yet been achieved. A number of institutional solutions, for example, the SWIFT system and CLS Bank, have shown their dependence on the will of individual states, and, accordingly, they can no longer fully perform the functions of fair and equal servicing of the interests of parties to cross-border retail settlements. Thus, alternative mechanisms are being actively searched for, including on the basis of recommendations and standards developed by international organizations (BIS, FSB, ISO).

A feature of the integrated regulation of cross-border retail settlement as a multicomponent institution is the formation of specific payment infrastructures in the international payment market, which allow market actors to maximally take into account, on the one hand, the requirements of the local legislation of the country where the

settlement parties are located and, on the other hand, to resolve certain issues within the framework of bilateral and multilateral agreements of such entities among themselves. These infrastructures include: payment infrastructure based on international correspondent banking relations; interdependent payment infrastructures; closed-loop payment infrastructure; *peer-to-peer* payment infrastructure (intermediary free). The efforts of the international payment community are aimed at developing new standards of legal regulation within the framework of established international payment infrastructures.

The second chapter of the thesis research "International and national models of legal regulation of the infrastructure of cross-border retail settlements" is devoted to the international legal and national legal regulation of modern types of payment infrastructures for cross-border retail settlements in different countries. The *first paragraph* of the second chapter examines the features of international legal regulation of cross-border retail settlements. Due to the lack of universal international legal acts regulating the sphere of cross-border retail settlements, *soft law* acts play a special role. It stands to mention the important contribution of the BIS, the BIS Committee on Payments and Market Infrastructures (CPMI) and the FSB to the development of advisory regulations and rules for the operation of payment institutions, which are widely used by central banks of different countries to form their national payment legislation.

The adoption in 2020 by the Group of Twenty (G20) of the *Enhancing Cross-border Payments: Stage 3 roadmap* marked a new milestone in the elaboration of the legal framework for cross-border retail settlements, the logic of which can be used both globally and regionally. According to the final conclusions of the FSB and the BIS, the phased voluntary implementation by the world's leading states of the 2020 Roadmap (through the implementation of advisory regulations and approaches into national legislation) will change the landscape of international and national legal regulation of cross-border retail settlements in 2025 perspective. An analysis of the provisions of the 2020 Roadmap at the moment, taking into account the current political climate, allows for concluding that it is unlikely that the set objectives of legal regulation will be achieved by 2025, however, certain provisions will definitely be implemented, including

by the national legislator, for the purposes of regional unification of cross-border retail settlements.

The second paragraph of the second chapter is devoted to a detailed analysis of the EU Single Euro Payment Area (SEPA). The systematic development of the Trans-European Automated Real-time Gross Settlement Express Transfer System (TARGET) has led to the need to create a specific infrastructure for cross-border payments within the union. The solution to this issue was precisely the launch of the SEPA plan in the early 2000s, which was designed to eliminate the differences between domestic and cross-border retail payments in euros from both a technical and legal point of view. The result of the implementation of the SEPA plan was a complete transformation of the EU payment infrastructure for retail settlements, which currently allows us to talk about the almost complete blurring of the distinction between internal and cross-border retail settlements in the euro area. The specifics of the technical, economic and legal regulation of this project have led to the fact that for the participants of the SEPA project, the legal differences between internal and cross-border retail payments have ceased to exist. This has become possible to a greater extent due to the transition of EU member states to settlements in the single currency and a decrease in the share of forex transactions in cross-border retail settlements.

This paragraph analyzes the regulations governing the SEPA infrastructure, as well as the main clearing and settlement mechanisms, namely: (i) through the use of national clearing houses (ACH); (ii) through the use of regional clearing houses to connect PSPs within the payment infrastructure in different, but not all countries; (iii) through the use of a specialized Pan-European Automated Clearing House (PE-ACH) to connect the PSPs within a payment infrastructure accessible from any country that has joined the SEPA plan. In our opinion, the existence of parallel clearing structures complicates the unification of payment mechanisms in the EU market. The solution could be the creation of a single automated clearing house for both internal and cross-border retail transactions in the euro area. This would obviously simplify payment processing and, ultimately, make such payments more accessible (in terms of applicable fees, etc.) to payment service users.

However, to achieve this goal, it is necessary to eliminate national (and in some cases regional) clearing houses in some countries, as well as develop uniform legal regulation at the level of each country participating in the SEPA project, which is unlikely to be available in the near future due to political reasons. Some opposition to unification under the SEPA plan can be seen at the level of some national PSPs and payment service users, in particular, the case of *Verein für Konsumenteninformation v Deutsche Bahn AG* (2018), which was considered by the EU Court, is indicative. In this dispute, the Austrian Consumer Association demanded that the actions of the German railroad operator in refusing to accept payments from Austrian consumers by direct debit be declared illegal.

The German railroad operator argued that this payment method is available only to consumers residing in Germany, which is stipulated in the relevant transportation service contract. The EU Court of Justice, with reference to the provisions of EU Regulation No. 260/2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 dated March 14, 2012 and SEPA Direct Debit Rulebook, ruled that the German railroad operator violated the requirements of the law, since SEPA rules do not allow preferences for payment service users based on their location, and should be applied equally to all persons within the SEPA umbrella. As the court pointed out, the main idea of implementing the SEPA plan is to unify the norms of the payment legislation of all countries, and, accordingly, the conditions (as well as fees) for such payments should be applied without national exceptions.

The third paragraph of the second chapter examines the peculiarities of national legal regulation of cross-border retail settlements using the example of the legislation of the Russian Federation and the USA. The choice of the American payment market is due to the special status of the US dollar as one of the main currencies used in cross-border retail settlements. Unlike the EU, where it was possible to achieve a kind of supranational unification within the framework of the SEPA project, the legislation of Russia and the USA demonstrates a different trend – the use of international correspondent banking mechanisms and interdependent payment infrastructures. One of the key issues in this

case is the conduct of forex transactions in the implementation of cross-border retail settlement. For example, in the United States, cross-border retail payment transactions are carried out through one of three payment schemes:

1. FV (*Fixed-to-Variable*) – US dollars are exchanged for a certain amount of foreign currency (of the payment destination) at the average exchange rate. At the same time, the final settlement takes place in US dollars between an American PSP and the Federal Reserve Bank.

2. FF (*Fixed-to-Fixed USD-to-USD*) – the settlement takes place entirely in US dollars (without exchange for the national currency). This is possible in a situation where the payee's PSP has the opportunity to open an account in US dollars in accordance with the norms of national legislation. At the same time, again, the final settlement takes place in US dollars between an American PSP and the Federal Reserve Bank.

3. F3X (*Fixed-to-Fixed FC-to-FC*) – the settlement takes place entirely in foreign currency. The exchange rate of the foreign currency is determined and the final settlement in this case takes place through an American PSP and the relevant "*foreign gateway operator*" (through its national clearing network), that is, actually outside the USA.

Thus, in most cases, cross-border retail settlement in US dollars is not completely "cross-border" due to the need to establish a currency ratio within the settlement. This, among other things, allows the US dollar to be used as a "financial weapon" within the framework of the application of financial sanctions and complicates the international payment infrastructure.

In such a situation, the development of national payment legislation and infrastructure for cross-border retail settlements, including in national currency, is becoming particularly relevant. The active development of Russian legislation on payments and payment markets began only in 2011 with the adoption of the Law on the National Payment System. Up to this point, there were a number of laws regulating the banking sector and the activities of the Central Bank of the Russian Federation, but there was no in-depth study of the norms of payment legislation either in the field of internal

settlements, or even more so in the field of cross-border retail settlements. At the same time, over the past decade, the Bank of Russia has managed to significantly format the Russian payment landscape, completely renovate the state payment system of the Bank of Russia, develop and integrate a number of special payment systems into the payment infrastructure, launch special structures for the transmission of financial messages and card payments. In addition, significant changes have also occurred in the infrastructure and regulation of cross-border retail payments.

It should be noted that within the framework of the National Payment System Development Strategy for 2021—2023, it was planned to further improve national mechanisms for the implementation and regulation of cross-border retail payments, bring the payment infrastructure in full compliance with the provisions of the 2020 Roadmap. In our opinion, the potential for the implementation of these norms of the National Payment System Development Strategy for 2021—2023 was very great, which would make it possible to unify the payment landscape as much as possible, including with countries that joined the SEPA plan. Along with that, there is a risk that the changed political and economic conditions may lead to the opposite trend – a shift away from the trend of "globalization" in international settlements (including with reference to the main reserve currencies) in favor of the trend of "regionalism" with reference to the national currencies of some states. Some plans to create a new landscape of cross-border retail payments for Russian entities can be found in the general Financial Market Development Strategy of Russia until 2030, the practical implementation of which, in our opinion, should be developed in the National Payment System Development Strategy for a new period after 2023, which has not yet been adopted by the Bank of Russia.

The third chapter "International payment systems: The concept, legal nature, legal risks and future development" focuses on the analysis of the concepts of "payment system" and "international payment system". It examines the legal possibility of creating international closed-loop payment systems, as well as the activities and role of government agencies of the Russian Federation in terms of ensuring the accessibility of such payment infrastructures for Russian entities. *The first paragraph* of the third chapter is devoted to the concept, main elements and characteristics of the payment system

institution. The key to the concept of a "payment system" for the purposes of payment legislation and the development of international payment infrastructures is an indication that this mechanism is created to achieve the final settlement of obligations or to achieve a "*settlement*" between the parties to a monetary obligation. This property of the payment system is emphasized in the English-language literature, where such systems are often called *settlement systems*.

Any payment system consists of the following elements: (i) a payment instrument that allows for launching a payment procedure through such a payment system; (ii) participants in the payment system; (iii) a set of regulations, standards and rules governing the procedure for making payments in such a system, setting the time of clearing (if applicable) and settlement; (iv) a certain technical mechanism for making a payment, that is, transferring funds from the payer's account to the payee's account; (v) specific legal rules according to which the fulfillment of payment obligations within the system is guaranteed so that the payment made through the payment system is considered irrevocable and final, and the debtor's obligations to the creditor, respectively, are properly fulfilled.

In general, it is possible to create and operate payment systems with a different combination of elements, participants and their functions. The interaction of the participants of the payment system among themselves is subject to certain standards or rules of the relevant payment system, which are developed by the payment system operator within the framework of applicable legal norms and allow to adjust relations between the participants of the system, to unify the documents on the basis of which payments are made in the system, and also establish the time of fulfillment of payment obligations.

The peculiarity of the legal regulation of complex, multicomponent institutions, in our opinion, is the inability at the legislative level to take into account all the subtle aspects that may arise during the functioning of such institutions in practice, which leads to fragmented legal regulation. This conclusion is also true for the payment system institution. This circumstance, as well as the desire of some states to maintain their financial independence, has led to the fact that most payment systems operate at the

national level. Accordingly, the use of the term "international" in payment legislation in relation to a payment system, as a rule, means that this system operates in different markets, but through many interconnected local legal entities with separate licenses, clearing houses and settlement centers. As a result, these systems are not formally an international closed-loop payment infrastructure with a single control and settlement center (system operator). Thus, the term "international payment system or IPS" can be defined through the prism of the basic definition of a "payment system", supplementing it with the so-called international element, namely:

- Cross-border character of the payment made by participants of the payment system, including on a multicurrency basis;
- The commercial enterprises of the payment system operator and participants are located in different countries;
- The system provides an opportunity for cross-border access for foreign participants (PSPs) and their settlements on behalf of their customers.

The *second paragraph* of the third chapter examines the main legal risks arising from the creation and operation of international payment systems. The issues of the "vertical nature" of regulation (public law issues) are studied, which include the role and powers of the central bank in monitoring and supervising the IPS, as well as the interaction of the IPS with the central banks of various states where such a system operates, and the order of interaction of central banks of different countries. In this paragraph, attention is paid to legal issues and "horizontal nature" (private law issues), namely: the procedure for legislatively establishing the moment of finality of payment in the IPS, elaboration of the contractual basis of the system, analysis of the ways in which security is provided by the participants of the system, as well as the formation of the legal basis of the IPS framework.

Thus, the IPS is a multicomponent international mechanism, the activities of which fall under the jurisdiction of both the legislation of the country where the operator of such a system is established and the countries where the IPS participants are incorporated. Moreover, a number of technological mechanisms in modern IPS are so complex (for example, the procedure of multilateral international netting) that the current

legislation does not always have time to offer proper legal regulation for them. Of course, the ideal solution could be the adoption of a unified international agreement containing the main substantive and conflict rules governing the activities of the IPS. However, in the short term, such a scenario seems unrealistic due to the mutually exclusive economic interests of some states. Accordingly, the most optimal and relevant option for today will be to consider the possibility of creating regional IPS (for example, at the EAEU level) or IPS with participants from friendly states, for example, China.

The *third paragraph* of the third chapter presents the prospects for creating international payment systems for cross-border retail settlements of Russian entities (PRC IPS, EAEU IPS). The current level of digital development, as well as the level of elaboration of the general principles of payment systems, allow us to think about the implementation of the ambitious goal of creating an IPS to simplify cross-border retail settlements with the participation of Russian entities. Thus, for example, an analysis of the interaction of the payment infrastructure of the Russian Federation and China based on the Russian FPS and the Chinese CIPS shows that at the moment the creation of interdependent national payment infrastructures for cross-border retail settlements is not optimal. In this situation, the solution may be the creation of international closed-loop payment systems, which is most likely to be implemented within the EAEU.

This possibility has been discussed since the early 2000s, and in 2019 it took a more explicit shape in connection with the entry into force of the EAEU Common Financial Market Concept, which laid down the legal principles for the creation of such an infrastructure. Further detailed elaboration of the procedure for the creation and functioning of the EAEU IPS can be carried out on the basis of the BIS and FSB guidelines, as well as the 2020 Roadmap. In addition, the practical experience of the EU in the implementation of the SEPA project may be useful. The creation of such an IPS would reduce the sanctions pressure on Russian entities engaged in cross-border retail settlements, as well as contribute to the further de-dollarization of the national economy and the development of integrated payment interaction with residents of friendly states, in particular, from among the BRICS member states.

In the **Conclusion**, the main results of the thesis research are presented, the main risks and trends in the field of legal regulation of the international payment infrastructure for cross-border retail settlements in Russia and other countries are highlighted, the prospects for creating closed-loop international payment systems for cross-border retail settlements of Russian entities, including with counterparties from the EAEU and other friendly states, are analyzed.

The main conclusions of the thesis are contained in articles published in scientific journals included in the HSE list of recommended journals (List D) and in other publications.

Articles in journals included in the HSE list of recommended journals (List D):

Ruderman I.F. Certain Legal Aspects of International Payment Systems // Statute. 2018. No. 9. P. 66—78.

Ruderman I.F. Bases of Legal Regulation of Cross-Border Settlements via the Cross-Border Interbank Payment System (CIPS): New Possibilities for Russian Market Participants // Banking Law. 2019. No. 6. P. 61—68.

Ruderman I.F. Cross-Border Retail settlements with participation of Russian entities: Legal aspects // Zakonodatelstvo. 2020. No. 8. P. 32—40.

Ruderman I.F. International settlements in the digital era: the main legal problems and solutions // Banking Law. 2021. No. 6. P. 24—32.

Article in journal included in the List of peer-reviewed scientific publications of the Higher Attestation Commission:

Ruderman I.F. Economic-Legal Nature and Functions of Money. Role of Money in Payment Systems Origin // Historical, philosophical, political and legal sciences, culturology and art history. Issues of theory and practice. 2012. Vol. 2. No. 9 (23). P. 154—158.

Articles in journals included the reports of the participants at scientific conferences:

Ruderman I.F. Cross-border retail payments: Key problems and ways to solve them in the digital era // Rights and obligations of citizen and public authority: Search for balance of interests. XVII International Scientific and Practical Conference (Kutafin

Readings) of the Kutafin Moscow State Law University (MSLA) and XX International Scientific and Practical Conference of the Faculty of Law of the Lomonosov Moscow State University (MSU), in 5 parts. Part 2. M.: Prospect, 2020. P. 318—323.