

LAW ON ELECTRONIC COMMERCE
(Official Gazette of RoM, 80/04)

I GENERAL PROVISIONS

Scope

Article 1

The Law regulates providing of services for remuneration at a distance, by means of electronic equipment for the processing and storage of data, at the individual request of a recipient of a service (hereinafter: information society services), liability of information society services provider and rules related to conclusion of electronic contracts.

Exemptions

Article 2

Provisions of this Law shall not apply to: data protection, taxation, activities of notaries, representation of clients and protection of their interests before the courts, gambling activities which involve wagering a stake with monetary value in games of chance, including lotteries, casino games, betting transactions and slot machine gambling, unless otherwise provided by special law.

Definitions

Article 3

For the purpose of this Law:

- The term "data" means information, communication and document created, delivered, received, recorded, stored or presented by electronic, optical or similar means, including transmission via Internet, electronic mail and fax.
- The term "information society service" means service provided at a distance, for remuneration, by means of electronic equipment for the processing and storage of data, and at the individual request of a recipient of a service, especially selling goods and services via Internet, data offering via Internet, marketing by means of Internet, web browsers, as well as enabling search of data and services transmitted by electronic network, providing access to network or storage of recipient's data.
- The term "service provider" means any legal or natural person providing information society services
- The term "service recipient" means any natural or legal person that, for professional or other objectives, uses information society services
- The term "electronic contract" means a contract between legal and natural persons, which is concluded, delivered, received, terminated, cancelled, accessed and presented using electronic, optical or similar means, including transmission via Internet.
- The term "commercial communication" means any form of communication designed to directly or indirectly promote goods, services or reputation of a legal or natural person pursuing registered activity, with exception of communications that:
 - enable direct access to activities of legal or natural person, including addresses, domains or electronic mail addresses;
 - relate to goods, services or reputation of persons, compiled in an independent manner, particularly when financial performances have not been considered.
- The term "consumer" means any natural person concluding legal transaction on the market for purposes which are outside his or her trade, business or profession.

Coordinated legislation

Article 4

Provider of information society services with head office in the Republic of Montenegro (hereinafter: Republic) shall proceed and provide services in line with the Law and regulations adopted based on law of the Republic.

Exemptions from application of national legislation

Article 5

Provisions of Article 4 of this Law shall not apply to providers of services with head office in a member state of EU offering information society services in the Republic. Exceptionally, paragraph 1 of this Article shall not apply to the following fields:

- 1) Copyright law and intellectual property rights;
- 2) Trade of pharmaceuticals, medical and homeopath products
- 3) Issuing of electronic money;
- 4) Forms of contracts creating or transferring property rights on real estate;
- 5) Activities of insurance companies;
- 6) Liabilities arose from consumer contracts;
- 7) Freedom of contracting parties to choose law to be applied to contract;
- 8) Allowing commercial communications which are not requested by recipient, via electronic mail;

Freedom to provide services

Article 6

Provision of information society services is free. No special permit, license or concession is needed for providing information society services. Provider of information society services needs to register title of activity, i.e. information society services, with Central Register of Commercial Court (hereinafter: CRPS).

II OBLIGATION TO PROVIDE INFORMATION AND COMMERCIAL COMMUNICATION

Information to be provided

Article 7

Provider of information society services shall render easily, directly and permanently available to the recipients and competent authorities, the following information:

- 1) Name of service provider;
- 2) Head office of service provider;
- 3) Other data on service provider, including electronic mail address, based on which consumer can contact provider rapidly and directly, and
- 4) Data on registration with CRPS;
- 5) Detailed data on competent authority, if industry of service provider is a subject to official surveillance;
- 6) As concerns the specially regulated industries, i.e. regulated professions:
 - Professional or similar institution with which service provider is registered;
 - Professional title and state where it has been granted;
 - Reference to the applicable professional rules in the state of establishment and the means to access them.
- 7) Tax identification number, if service provider is VAT taxpayer; if provider of information society services indicates prices, these are to be indicated clearly

and unambiguously and particularly must indicate whether delivery costs, other handling fees, tax and other related expenses are included.

Commercial communications

Article 8

Provider of information society services shall ensure that any data contained by commercial communications, which are part of, or constitute, an information society service, comply with the following requirements:

- 1) The commercial communication shall be clearly identifiable as such at the moment of receiving it by recipient;
- 2) The person on whose behalf the commercial communication is made shall be clearly identifiable;
- 3) Any promotional call for bid from commercial communication (including discounts and gifts) shall be clearly identifiable as such;
- 4) Requirements to be met to qualify for bid from commercial communication shall be easily available and presented clearly and unambiguously.

Unsolicited commercial communication

Article 9

Unsolicited (undesirable) commercial communication by electronic mail shall be permitted only upon previous consent of the person to whom such a communication is aimed to, in compliance with the law.

III DOCUMENT IN ELECTRONIC FORM

The form and legal effectiveness of contracts

Article 10

Contract may be concluded by electronic means, i.e. in electronic form. Offer and acceptance of the offer may be given by electronic means, i.e. in electronic form.

When electronic communication, i.e. electronic form, is used for conclusion of a contract, legal effectiveness and validity of such a contract may not be contested only for being concluded in electronic form.

Exemptions to contracts

Article 11

Provision referred to in Article 10 paragraph 3 of this Law shall not apply to:

- 1) Property, prenuptial or marital agreements and other contracts regulated by family law;
- 2) Contracts on property disposal which require consent of social welfare centre;
- 3) Contracts on assignment and division of property in a lifetime, contracts on whole life alimony and agreements related to inheritance, agreements on inheritance waiver, agreements on assignment of hereditary part before division, bequest activities and other contracts stipulated by laws regulating inheritance;
- 4) Gifts agreements;
- 5) Contracts on assignment of property rights on real estate or other legal businesses which regulates real rights on real estate, with exception of rental contract;
- 6) Contracts for which special law stipulates to be in form of notary act or document;

- 7) Contracts for which special law or bylaw adopted on the basis of law explicitly define obligation of autograph for paper documents or endorsement of autograph;
- 8) Affidavit contracts, if bail is a person acting outside his or her trade, business or profession.

Subsidiary application

Article 12

Unless otherwise provided by this Law, general regulations stipulating contractual relations shall be applied to legal relations arising from or related to contracts concluded by electronic means or in electronic form.

Electronic signature

Article 13

When the signature of a person is required as an assumption of legal validity and effectiveness of a contract, electronic communication signed by electronic signature is deemed to meet that condition, in compliance with the law.

Information and notice to be provided prior to contract conclusion

Article 14

Prior to conclusion of the contract on providing information society services, provider of information society services shall ensure the following information and notices to potential service recipient, in a clear, understandable and unambiguous manner:

- 1) technical steps to follow to conclude the contract;
- 2) provisions of contract;
- 3) general terms of business, if they are integral part of the contract;
- 4) languages offered for the conclusion of the contract;
- 5) codes of conduct to which providers of services conduct in conformity with, and how those codes of conduct are accessible by electronic means.

Prior to conclusion of the contract, provider of information society services shall provide technical means for identifying and correcting input errors into communication to potential service recipient, prior to its placing or sending.

Contract parties that are not consumers in mutual contractual relations may explicitly agree on derogation from provisions referred to in paragraph 1 and 2 of this Article.

Provisions referred to in paragraph 1, 2 and 3 of this Article shall not apply to contracts concluded by exchange of electronic mail or by equivalent individual communications.

Contract availability

Article 15

Provider of information society services shall ensure contract provisions and provisions of general conditions of business, which are integral part of the contracts concluded in electronic form, to be available to recipients of services in a way allowing their storage, usage anew and reproduction.

Acknowledgment of receipt

Article 16

Provider of information society service shall acknowledge receipt of electronic

communication containing an offer or receipt of an offer for conclusion of contract, by electronic means – special electronic communication and without undue delay

Contract parties that are not consumers in mutual contractual relations may explicitly agree on derogation from provisions referred to in paragraph 1 of this Article.

Provisions of paragraph 1 and 2 of this Article shall not apply to contracts concluded by exchange of electronic mail or by equivalent electronic communications.

Effective entry date

Article 17

Contract in electronic form is deemed to be concluded when party offering service receives electronic communication containing statement of offered party on acceptance of offer.

Offer and the acceptance of offer, as well as other statements of will made by electronic means, are deemed to be received when the party to whom they are addressed is able to access them.

It is prohibited to exclude application of provision referred to in paragraph 2 of this Article for consumer contracts.

IV LIABILITIES OF INFORMATION SOCIETY SERVICES PROVIDERS

"Mere conduit"

Article 18

Provider of information society services that transmits electronic communications is not liable for the content of the information transmitted and for its delivery, if provider:

- 1) has not initiated the transmission;
- 2) has not selected the information or documents transmitted;
- 3) has not selected or modified the information contained in the transmission;
- 4) has not selected the receiver of the transmission..

Transmission of information and provision of access referred to in paragraph 1 of this Article shall be executed in a way enabling automatic, intermediate and transient storage of the information transmitted and data contained, and shall be temporary stored for a period not longer than is reasonably necessary for the transmission.

Temporary storage (caching)

Article 19

Provider of information society services that transmits information provided by a recipient of the service via communication network is not liable for automatic, intermediate and transient storage, performed for the sole purpose of making more efficient onward transmission of the information to other recipients upon their request, if provider:

- 1) has not modified the information;
- 2) has complied with conditions on access to the information;
- 3) has complied with the rules on updating of the information;
- 4) has acted in compliance with allowed application of technologies for collection of information;
- 5) has removed or disabled access to the information which the provider has stored

immediately upon being acknowledged that the information have been removed from transmission via network or the access to the information has been disabled or that a court or other administrative authority has ordered such removal or disablement of the access.

Permanent storage (hosting)

Article 20

Provider of information society services that stores information provided by a recipient of the respective service and upon recipient's request, is not liable for the content of information stored, if provider:

- 1) does not have actual knowledge on illegal activity of recipient or information content and could not have had such a knowledge;
- 2) removes the information and disables access to it immediately upon obtaining such knowledge that the respective activity or information is illegal.

Provisions referred to in paragraph 1 of this Article shall not apply to cases when the recipient of the service is a person in any way associated with the provider of the respective service (companies having holdings in each other, companies in which the same natural persons have holdings, etc)

Links

Article 21

Provider of information society services that provides access to third information by electronic transmission is not liable for that information if:

- 1) does not have actual knowledge on illegal activity of recipient or information content and could not have had such a knowledge;
- 2) removes the information and disables access to it immediately upon obtaining such knowledge that the respective activity or information is illegal.

Binding notifications

Article 22

In the process of providing information society services provider is not obliged to examine information stored, transmitted or made available or examine circumstances that could indicate illegal activity of a recipient.

Provider of information society services shall notify the competent public authority if determining that:

- there is a reasonable doubt that the receiver undertakes illegal activity by using the service provided by the provider
- there is a reasonable doubt that the receiver of the service has provided illegal information.

Provider of information society service shall, based on appropriate court or administrative act, present all information providing a basis to undertake investigation and prosecution of crime offenders, i.e. protection of third parties.

V MONITORING AND CONTROL

Monitoring of application

Article 23

The public administration body authorized for information technology issues, through inspectors, shall monitor and control application of this Law, in compliance with law.

In order to perform monitoring, providers of information society services shall enable access to empowered persons from the body referred to in paragraph 1 of this Article to electronic equipment and devices, as well as present or supply needed information and documents relating to the subject of monitoring.

VI CONTRAVENTIONS

Infringements

Article 24

Legal person - provider of information society services shall be sanctioned by a fine ranging from 10 to 300 minimum salaries in the Republic if:

- 1) does not provide prescribed information to recipients and authorized public administration bodies in a form and way making it directly and permanently available (Article 7);
- 2) sends unsolicited commercial communication without prior consent of the person to whom the communication is aimed to (Article 9);
- 3) does not provide information and notices to potential service recipient, in an understandable and unambiguous manner, prior to contract conclusion (Article 14);
- 4) does not provide access to contract provisions and general business conditions in a way enabling recipient to store them, reuse and reproduce (Article 15);
- 5) does not inform authorized public administration body on illegal activities or information of recipients of his services or does not present all data in compliance with respective court or administrative act (Article 22 paragraphs 2 and 3);
- 6) does not provide access to electronic equipment and devices and does not present or supply needed information and documents without any delay in order to provide monitoring and control (Article 23 paragraph 2).

Responsible person acting as such on behalf of a legal person shall be sanctioned by fine ranging from one half to 20 minimum salaries in the Republic for contravention referred to in paragraph 1 of this Article.

Natural person – provider of information society services who commit the contravention referred to in paragraph 1 of this Article shall be sanctioned by fine ranging from one half to 20 minimum salaries in the Republic.

In case of particularly serious infringements or repeated infringements referred to in paragraph 1 of this Article banning of business activity lasting from three to six months may be sentenced.

VII TRANSITIONAL AND FINAL PROVISIONS

Article 25

Provisions of Article 5 of this Law shall be applied starting from the date of official entry of the Republic into EU membership.

Article 26

This Law enters into force eight days following the date of its publication into the "Official Gazette of the Republic of Montenegro."