

# **ELECTRONIC COMMERCE ACT**

*In force from 24 Dec. 2006*

*Prom. SG. 51/23 Jun 2006, amend. SG. 105/22 Dec 2006, amend. SG. 41/22 May 2007, amend. SG. 82/16 Oct 2009, amend. SG. 77/4 Oct 2011, amend. SG. 105/29 Dec 2011, amend. SG. 57/28 Jul 2015*

## **Chapter one. GENERAL PROVISIONS**

### **Subject matter of regulation**

Art. 1. (1) This Act regulates public relations which are connected with carrying out electronic commerce.

(2) Within the meaning of this Act, electronic commerce is the provision of information society services.

(3) (suppl. – SG 105/11, in force from 29.12.2011) Information society services are those services, including providing commercial messages, which are usually provided for remuneration, at a distance, by electronic means, after an explicit request on the part of the recipient of the service.

(4) The provisions of this Act shall not apply to regulating the relations in the provision of those information society services which are connected with:

1. establishing and collecting public arrears;
2. (amend. – SG 41/07) personal data protection, including the protection in the field of electronic communications;
3. the agreements, decisions and concerted practices within the meaning of Art. 9 of the Protection of Competition Act;
4. the activities of a public notary and other professional activities connected with the exercise of public functions;
5. the representation of a client before the courts;
6. gambling industry.

### **Freedom to provide information society services**

Art. 2. The information society services shall be provided freely, unless the law provides otherwise.

### **Provider and recipient of information society services**

Art. 3. (1) Provider of services is a natural person or a legal person which provides information society services.

(2) Recipient of services is a natural person or a legal person which uses information society services for professional or other purposes, including the purposes of seeking information or making it accessible.

## **Chapter two. OBLIGATIONS TO PROVIDE INFORMATION**

### **General information**

Art. 4. (1) The provider of information society services shall make available to the recipient of the service and the competent authorities, in a form and manner which is easily, directly and permanently accessible, the following information:

1. the name or designation of the service provider;
2. the service provider's permanent address or the address of his registered office and central

administration;

3. the address at which the service provider carries out his activity, if it is different from the one referred to in item 2;

4. contact data, including the service provider's telephone number and electronic mail address, which make it possible to contact him rapidly and communicate with him in a direct manner;

5. details of the commercial or other public register in which the service provider is entered;

6. where the provision of information society services is subject to an authorization, or registration, or licence scheme – information about the relevant supervisory authority exercising control over the service provider's activity;

7. where the service provider exercises a regulated profession – information about the chamber, professional body or organization that he is a member of or is registered with, as well as his professional title and the State where that title has been granted, and a reference to the applicable rules regarding his right to pursue the craft activity or the profession and instructions concerning the means to access them;

8. respective details if he is registered under the [Value Added Tax Act](#);

9. any other information provided for in a statutory instrument.

(2) Where, in the provision of information society services, prices are referred to, these shall be indicated clearly and unambiguously. The service provider, in particular, shall indicate whether the final price is inclusive of any taxes, fees and charges.

#### **Saving information on the end consumer's device and access to it**

Art. 4a. (new – SG 105/11, in force from 29.12.2011) (1) The provider of the information society services shall keep information or shall obtain access to information, saved on the end device of the service consumer, if:

1. clear and complete information regarding the purposes of saving and access to the information, as well as information about the purposes of its processing has been provided to the services consumer according to the Protection of Personal Data Act;

2. opportunity to refuse saving and access to the information has been provided to the services consumer.

(2) In the cases of Para 1 provides of information society services shall ensure the services consumer with the opportunity to receive information about the saved in the end device data.

(3) In case that the services consumer did not objected, in event of following saving or access to information by one and the same provider, requirements of Para 1 shall not be obligatory.

(4) Requirements of Para 1 shall not be applied with regard to the saving of information and providing access to it, where they are needed for:

1. transmission of messages via electronic communication net;

2. provision of a service to the information society, required explicitly by the consumer of the information society services.

#### **Commercial communications**

Art. 5. (1) Within the meaning of this Act, commercial communications denotes those communications which are designed to promote, either directly or indirectly, the goods, services or image of any person pursuing a commercial or craft activity or exercising a regulated profession.

(2) The independent use of the following shall not constitute commercial communications within the meaning under para. 1:

1. information allowing direct access to the activity of that person, including his domain name or his electronic mail address;

2. communications relating to the goods, services or image of the person, provided that the information has been collected independently, without any financial consideration.

(3) The commercial communications which constitute or form part of an information society service shall have to meet the following requirements:

1. be clearly identifiable as a commercial communication;
2. clearly identify the natural person or legal person on whose behalf the commercial communication is made;
3. clearly and unambiguously identify the conditions that must be met to qualify for promotional offers, such as discounts, premiums and gifts, where available;
4. to ensure easy access to clear and unambiguous conditions for participation in competitions and games with awards, if such information is available;
5. to contain the information provided for in other statutory instruments.

#### **Unsolicited commercial communications**

Art. 6. (1) The service provider shall ensure that any unsolicited commercial communications sent by him by electronic mail without the prior consent of the recipient shall be clearly and unambiguously identifiable as such as soon as they are received by the recipient.

(2) (amend. - SG 105/06, in force from 24.12.2006) The Commission of Consumer Protection shall keep an electronic Register of the electronic mail addresses of those legal persons which are not willing to receive unsolicited commercial communications, in accordance with a procedure laid down by way of an order of the Council of Ministers.

(3) The sending of unsolicited commercial communications to the electronic mail addresses entered in the Register referred to in para. 2 shall be forbidden.

(4) The sending of unsolicited commercial communications to consumers without their prior consent shall be forbidden.

#### **Commercial communications to persons exercising regulated professions**

Art. 7. (1) Those persons who exercise regulated professions shall be able to use commercial communications which constitute or form part of an information society service.

(2) The commercial communications referred to in para. 1 shall have to comply with the professional rules and Codes of ethics for persons exercising regulated professions, in particular the rules regarding independence, merits and honour of the profession, professional confidentiality and fair attitude to the clients and to the other members of the profession.

### **Chapter three.**

#### **OBLIGATIONS OF SERVICE PROVIDERS WHERE CONTRACTS ARE CONCLUDED BY ELECTRONIC MEANS**

##### **Obligation to provide information**

Art. 8. (1) Where a contract is to be concluded by electronic means, the service provider shall give advance information to the recipient of the service in a clear, comprehensible and unambiguous manner, this information regarding the following:

1. the technical steps in concluding the contract and the legal consequences thereof;
2. whether the contract shall be filed by the service provider and what is the way in which the contract will be accessible;
3. the technical means for identifying and correcting the input errors, prior to the placing of the order for the conclusion of the contract;
4. the languages offered for the conclusion of the contract.

(2) The service provider shall indicate which code of conduct he subscribes to and how that code can be consulted electronically.

### **Access to the general conditions and content of the contract**

Art. 9. The service provider shall make available to the recipient of the service the general conditions and the content of the contract in a way that allows the recipient to store and reproduce them.

### **Obligations in placing the order for the conclusion of the contract**

Art. 10. (1) The service provider shall make available appropriate, effective and accessible technical means for identifying and correcting input errors prior to the placing of the order for the conclusion of the contract on the part of the recipient of the service.

(2) Without undue delay, the service provider shall acknowledge receipt of the order to the recipient of the service, by electronic means.

### **Receipt of the order for the conclusion of the contract**

Art. 11. The order for the conclusion of the contract and the acknowledgement of its receipt shall be regarded as received when the addressees thereof are able to have access thereto.

### **Exceptions**

Art. 12. (1) The provisions of Arts. 8 and 10 shall necessarily apply in those cases where the recipient of the service is a consumer.

(2) The provisions of Arts. 8 and 10 shall not apply to contracts concluded exclusively by electronic mail or by other equivalent means for exchange of individual communications.

## **Chapter four.**

### **LIABILITY OF PROVIDERS OF INFORMATION SOCIETY SERVICES**

#### **Liability in providing services of access and transmission**

Art. 13. (1) (amend. – SG 41/07) Where an information society service consists in the provision of access to or transmission through an electronic communication network, the service provider shall be liable neither for the content of the transmitted information nor for the activity of the recipient of the service, provided that:

1. he does not initiate the transmission of the information;
2. he does not select the recipient of the information transmitted, and
3. he does not select or modify the information transmitted.

(2) (amend. – SG 41/07) The provision of access to or transmission in an electronic communication network within the meaning of para. 1 shall include the automatic, intermediate and transient storage of the information carried out for the only purpose of transmission in the electronic communication network, the information not being stored for a period longer than is reasonably necessary for the transmission.

#### **Liability in providing services of automatic search of information**

Art. 14. (1) Where an information society service consists in the provision of automatic search of information, the service provider shall not be liable for the content of the information drawn, provided that:

1. he does not initiate the transmission of the information drawn;
2. he does not select the recipient of the information drawn, and
3. he does not select or modify the information drawn.

(2) Para. 1 shall not apply in those cases where the information resource from which the information is drawn is owned by the provider of the service or by a person connected with him.

#### **Liability in intermediate memorizing (caching)**

Art. 15. (amend. – SG 41/07) Where an information society service consists in the transmission of information input in the electronic communication network by the recipient of the service, the service provider shall not be liable for the automatic, intermediate or transient storage of the information needed for its effective transfer to other recipients of the service upon their request, provided that:

1. he does not modify the information;
2. he complies with the requirements regarding access to the information;
3. he complies with the generally accepted rules regarding the updating of the information;
4. he does not interfere with the lawful use of generally accepted technologies of obtaining data on the use of the information;
5. he acts expeditiously to remove or to disable access to information he has stored upon obtaining knowledge of the fact that:
  - a) the information at the initial source of the transmission has been removed from the network or access to it has been disabled, or
  - b) a competent State body has ordered such removal of the information or disablement of the access thereto where that is established in law.

### **Liability in storing other persons' information (hosting) and in electronic reference to other persons' information (linking)**

Art. 16. (1) Where an information society service consists in the storage of information provided by a recipient of the service, the service provider shall be liable neither for the content of the information nor for the activity of the recipient of the service, provided that:

1. he does not have knowledge of the unlawful nature of the activity or the information, or
2. he is not aware of facts or circumstances from which it would have been apparent to the service provider that the activity or the information is unlawful.

(2) Para. 1 shall not apply where:

1. the recipient of the service is a person connected with the provider of the service;
2. upon obtaining knowledge or awareness of the unlawful nature of the information, or upon being notified by a competent State body of the unlawful nature of the recipient's activity, the service provider has failed to act expeditiously to remove or to disable access to the information; that does not release the service provider from his legal obligation to preserve the information.

(3) Upon the request of a competent State body, in the cases provided for in law, the service provider shall submit any information regarding the recipient of the service and the activity thereof.

(4) Paras. 1 through 3 shall also apply in those cases where a service provider provides access to other persons' information by way of an electronic reference.

### **Absence of a general obligation to examine the information**

Art. 17. The service provider shall not be obligated to examine the information he stores, transmits or makes available in providing information society services, neither shall he be obligated to seek facts or circumstances evidencing any unlawful activity.

### **Services provided free of charge**

Art. 18. The provisions of Arts. 13 through 17 shall also apply to providers of information society services which are provided free of charge.

## **Chapter five. APPLICABLE LAW**

### **Applicable law in the provision of information society services**

Art. 19. (\*) (1) The requirements regarding the taking up and pursuit of the activity of provision of information society services shall be governed by the law of the State in which the place of activity of the service provider is, provided that it is inside the territory of a Member State of the European Union.

(2) The place of activity is the place from which the service provider carries out business activity for an indefinite period of time. The presence and use of the technical means and technologies required to provide the information society service is not sufficient, in itself, to determine the place of activity of the service provider.

(3) Paras. 1 and 2 shall not apply with regard to:

1. the requirements concerning the properties of the goods and the delivery thereof, and those services which are not provided by electronic means;

2. copyright and neighbouring rights, industrial property rights, rights over databases and rights over the topology of integrated circuits;

3. the emissions of electronic money issued by issuers of instruments for electronic money which are exempt from the general requirements regarding licensing;

4. (amend. – SG 77/11) the legal regulation regarding the advertising of shares of collective investment schemes of the State in which they are traded;

5. insurance contracts;

6. the freedom of the parties to choose the law applicable to a contract;

7. the contractual obligations under consumer contracts;

8. the requirements regarding the form of validity of those contracts which establish or transfer proprietary rights governed by the law of the State by geographic location of the real estate;

9. the permissibility of sending unsolicited commercial communications by electronic mail.

## **Chapter six.**

### **SUPERVISION AND COLLABORATION**

#### **Supervision**

Art. 20. (prev. text of art. 20, amend. - SG 105/06, in force from 01.01.2007) The Commission of Consumer Protection shall exercise the overall supervision regarding the compliance with this Act and the Order referred to in Art. 6, para. 2.

(2) (new - SG 105/06, in force from 01.01.2007) In exercising their employment obligations the officials of the Commission of Consumer Protection shall have the right:

1. of access to all documents, regardless of their form, directly or indirectly related to any infringement of this Act or of the legislation of the Member States of the European Union implementing the requirements of Directive 2000/31/EC of the European Parliament and the Council on the electronic commerce;

2. to order any person to provide information of infringements under Item 1, known to them;

3. to perform on-the-spot inspections.

(3) (new - SG 105/06, in force from 01.01.2007) In exercising their employment obligations the officials referred to in Para 2 shall be obliged to keep the official, bank, insurance, professional or trade secret and not to make available to the public data of the inspections before their end and not to use the information of the inspection except for its purpose.

(4) (new - SG 105/06, in force from 01.01.2007) The Chairman of the Commission of Consumer Protection shall have the right to:

1. order in writing the infringer to cease the infringement referred to in Para 2, Item 1;

2. request that the infringer declares he will cease the infringement referred to in Para 2, Item 1 and, if necessary, to oblige him to make the declaration available to the public;

3. order cessation or prohibition of any infringement under Para 2, Item 1 and, if necessary, to make

the order for cessation or prohibition of the infringement available to the public.

### **Collaboration and cooperation**

Art. 21. (1) (amend. - SG 105/06, in force from 01.01.2007; amend. – SG 82/09, in force from 16.10.2009) The Minister of Transport, Information Technology and Communications shall carry out collaboration and cooperation regarding the matters of information society services with the competent bodies of the Member States of the European Union and the European Commission.

(2) (amend. - SG 105/06, in force from 01.01.2007) The Chairman of the Commission of Consumer Protection shall organize and maintain information for the purposes of this Act, and the said information shall be published on the official Internet site of the Commission of Consumer Protection and shall contain:

1. general information regarding the rights and obligations of the providers and recipients of information society services and the procedure for settling the disputes arising between them;
2. information regarding the bodies and persons that are able either to provide additional information or to render practical assistance.

(3) (amend. - SG 105/06, in force from 01.01.2007; amend. – SG 82/09, in force from 16.10.2009) The Ministry of Transport, Information Technology and Communications and the Commission of Consumer Protection shall provide the possibility of being contacted on the matters referred to in paras. 1 and 2 at least by electronic means.

## **Chapter seven. DISPUTES**

### **Claims for the protection of consumers**

Art. 22. (amend. - SG 57/15) The Communications Regulation Commission and the consumer protection associations shall bring in claims for termination of or prohibition on actions and trade practices under this Act which violate the collective interests of consumers, as well as claims for indemnities in accordance with the procedure set forth in Chapter Nine, Section IV of the Consumer Protection Act.

## **Chapter eight. ADMINISTRATIVE SANCTION PROVISIONS**

Art. 23. (1) A provider of services committing or allowing the commitment of a violation of Art. 4, Art. 5, para. 3, Art. 8, para. 1, Art. 9 or Art. 10 shall be punished with a fine amounting to BGN 200 up to BGN 1,000 unless the act constitutes a crime.

(2) In the cases referred to in para. 1 a pecuniary sanction shall be imposed on the legal person or the sole proprietor amounting to BGN 500 up to BGN 2,500.

(3) In the cases of a repeated violation the fine referred to in para. 1 shall amount to BGN 500 up to BGN 1,500, and the pecuniary sanction referred to in para. 2 shall amount to BGN 1,000 up to BGN 4,000.

Art. 24. (1) A provider of services committing or allowing the commitment of a violation of Art. 6, paras. 1, 3 or 4 shall be punished with a fine amounting to BGN 250 up to BGN 1,500 unless the act constitutes a crime.

(2) In the cases referred to in para. 1 a pecuniary sanction shall be imposed on the legal person or the sole proprietor amounting to BGN 500 up to BGN 2,000.

(3) In the cases of a repeated violation the fine referred to in para. 1 shall amount to BGN 500 up to BGN 2,500, and the pecuniary sanction referred to in para. 2 shall amount to BGN 1,000 up to BGN 4,000.

Art. 24a. (new - SG 105/06, in force from 01.01.2007) (1) For non-fulfilment of an order under Art. 20, Para 2, Item 2 and Para 4 the guilty persons shall be imposed a fine in amount from 250 to 1000 BGN, and the sole-entrepreneurs and the legal persons – a proprietary sanction in amount from 500 to 2000 BGN.

(2) For repeated offence under Para 1 the guilty persons shall be imposed a fine, and the sole-entrepreneurs and the legal persons – a proprietary sanction, double the amount.

Art. 25. (1) (amend. - SG 105/06, in force from 24.12.2006) The records establishing the violations shall be drawn up by the officials designated by the Chairman of the Commission of Consumer Protection.

(2) (amend. - SG 105/06, in force from 24.12.2006) The penalty warrants shall be issued either by the Chairman of the Commission of Consumer Protection or by a member of the said Commission who has been explicitly authorized thereof by the Chairman of the Commission.

(3) The establishment of violations, as well as the issuance, appeal and enactment of the penalty warrants shall be carried out in accordance with the procedure set forth in the Administrative Violations and Penalties Act.

### **Additional provisions**

§ 1. Within the meaning of this Act:

1. "Provision of distance services" means the provision of services in which the parties are not in the same place at the same time.

2. "Provision of services by electronic means" means the provision of services in which each of the parties uses means of electronic processing, including digital compression and storage of the information, the service being provided by way of using wires, radio waves, optic or other electromagnetic means.

3. "Upon the explicit request of the recipient of the service" means that the service is provided upon the explicit statement of the recipient's desire to use the service.

4. "Consumer" means a consumer within the meaning of § 13, item 1 of the Supplementary Provisions of the Consumer Protection Act.

5. "Person connected with the service provider" means a connected person within the meaning of § 1 of the Supplementary Provisions of the Commerce Act.

6. "Domain name" means an alphabetical or an alphabetical-numerical designation of an electronic address allowing the identification of a resource, a computer or a group of computers in an Internet network through a standard Internet data transmission protocol.

7. "Regulated profession" means a regulated profession within the meaning of § 4c of the Supplementary Provisions of the Higher Education Act.

8. "Electronic mail" means an electronic means for storage and transmission of electronic communications via an Internet network by way of standard protocols.

9. "Electronic reference" means a link designated in a certain Internet site allowing the automatic reference to another Internet site, an information resource or an object by way of standard protocols.

10. (new - SG 105/06, in force from 01.01.2007) "Repeated" shall be the infringement, committed within one year from entry into force of the penalty warrant for imposition of a penalty for the same type of infringement.

### **Concluding provisions**

§ 2. "and the claims ensuing from the provision of information society services under the Electronic Commerce Act" is added at the end of para. 3 of Art. 126a of the Civil Procedure Code (prom., J., No. 12 of 1952; am., No. 92 of 1952, No. 89 of 1953, No. 90 of 1955, No. 90 of 1956, No. 90 of 1958, Nos. 50



and 90 of 1961; am., No. 99 of 1961; am., SG, No. 1 of 1963, No. 23 of 1968, No. 27 of 1973, No. 89 of 1976, No. 36 of 1979, No. 28 of 1983, No. 41 of 1985, No. 27 of 1986, No. 55 of 1987, No. 60 of 1988, Nos. 31 and 38 of 1989, No. 31 of 1990, No. 62 of 1991, No. 55 of 1992, Nos. 61 and 93 of 1993, No. 87 of 1995, Nos. 12, 26, 37, 44 and 104 of 1996, Nos. 43, 55 and 124 of 1997, Nos. 21, 59, 70 and 73 of 1998, Nos. 64 and 103 of 1999, Nos. 36, 85 and 92 of 2000, No. 25 of 2001, Nos. 105 and 113 of 2002, Nos. 58 and 84 of 2003, Nos. 28 and 36 of 2004, Nos. 38, 42, 43, 79, 86, 99 and 105 of 2005, Nos. 17, 33, 34, 36 and 37 of 2006).

§ 3. The following amendments and supplements are made to Art. 186, para. 2 of the Consumer Protection Act (prom., SG, No. 99 of 2005; am., No. 30 of 2006):

1. A new item 5 is created:  
"5. The Electronic Commerce Consumer;"
2. The current item 5 becomes item 6.

§ 4. Para. 5 is created in Art. 19 of the Telecommunications Act (prom., SG, No. 88 of 2003; am., Nos. 19, 77, 88, 95, 99 and 105 of 2005, Nos. 17, 29 and 34 of 2006):

"(5) The Commission controls the activity of providing information society services and maintains a Register of those legal persons which are not willing to receive unsolicited commercial communications, in accordance with the procedure set forth in the Electronic Commerce Act."

§ 5. The Council of Ministers shall adopt the Order referred to in Art. 6, para. 2 within 6 months following the promulgation of the Act in the State Gazette.

§ 6. This Act takes effect 6 months after its promulgation in the State Gazette with the exception of Art. 19, which takes effect on the date of entry into force of the Treaty of Accession of the Republic Bulgaria to the European Union.

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The Act was adopted by the 40th National Assembly on 9 June 2006 and has the official seal of the National Assembly affixed thereto.

**Concluding provisions**  
**TO THE ACT ON AMENDMENT OF THE ELECTRONIC COMMERCE ACT**

(PROM. – SG 82/09, IN FORCE FROM 16.10.2009)

§ 2. The Act shall enter into force from the day of its promulgation in the State Gazette.