

Merchants and Trade - Act No 30/2002 on Electronic Commerce and other Electronic Services

Unofficial translation

CHAPTER I General Provisions Article 1 Scope

This Act applies to electronic commerce and other electronic services

The Act does not apply to electronic services relating to taxation, protection of personal data, unlawful collusion or concerted practises, representation by legal counsel before the courts, gambling activities involving wagering money in games of chance and the activities of public notaries to the extent that such activities involve the exercise of public authority.

Issues under this Act are subject to the authority of the Minister for Commerce.

Article 2 Definitions

For the purposes of this Act the following terms shall have the following meanings:

1. Electronic service: A service normally provided in return for payment, from a distance, by electronic means, at the request of the recipient of the service.
2. Service provider: A natural or legal person providing electronic services.
3. Recipient of a service: A natural or legal person who, for professional ends or otherwise, uses electronic services.

Chapter II Principle of the Country of Origin Article 3 Principle

Electronic service provided by a service provider established in Iceland shall conform to Icelandic law on the establishment and operation of the service.

No restrictions shall be imposed on the freedom of service providers established in the European Economic Area to provide services in Iceland as regards the legal requirements on the establishment and operation of the service.

A service provider is regarded as being established in a state if such provider pursues an active economic activity in that state through a fixed establishment for an indefinite period.

Article 4

General Derogations from the Principle

The provisions of Article 3 do not apply to the following:

1. the right of parties to negotiate what legislation shall govern their contracts,
2. contractual obligations relating to consumer contracts,
3. the formal effect of contracts establishing or transferring rights to real estate where such contracts are subject to mandatory formal requirements pursuant to the law of the state where the real estate is situated.
4. copyrights and related rights,
5. the extent to which unsolicited commercial communications are permitted.
6. issue of electronic money by institutions in respect of which derogation has been granted under the provisions of Article 8 of Directive 2000/46/EC.
7. marketing of UCITS securities pursuant to Article 44 of Directive 1985/611/EC, and
8. freedom of establishment to provide insurance services pursuant to Directive 92/49/EC, Directive 92/96/EC, Directive 88/357/EC and Directive 90/619/EC

Article 5

Specific Derogations from the General Principle

Government authorities may, in specific cases, derogate from the provisions of Paragraph 3 of Article 3 by limiting the free flow of electronic services, provided that such limitation is necessary for the protection of:

1. public morality, public order, public safety
2. life and public health, or
3. consumers.

Restrictions pursuant to Paragraph 1 shall only be imposed on service providers if they violate the protective interests referred to therein or if there is substantial risk that the service provider will violate such interests. The restrictions shall not be more extensive than necessary.

Special measures under Paragraph 1 shall not be taken against specific service providers unless the Member

State where the service provider is established has, despite the request of Icelandic government authorities, neglected to take measures against violation or taken inadequate measures. The EFTA Surveillance Agency and the state where the service provider in question is established shall be notified of any proposed measures. However, this shall not apply to injunctions or investigations of criminal cases.

In cases of urgency, government authorities may derogate from Paragraph 3. In such cases the measures shall be notified as promptly as possible to the EFTA Surveillance Authorities and to the Member State where the service provider is established. The notifications shall specify why the matter is regarded as urgent.

CHAPTER III

Disclosure

Article 6

General Information

Service providers shall provide easy and permanent access to the following information concerning themselves:

1. name,
2. address at which the service provider is established,
3. state identification number,
4. postal address, electronic mail and other information which enables easy communication,
5. VAT number of the service provider,
6. public register in which the service provider is registered, e.g. the Register of Companies, Register of Co-operatives or Register of Firms,
7. licence and supervisory authority where the activity of the service provider is subject to licence.

In the case of regulated professions, the service provider shall also specify:

1. the professional title and state where it is granted,
2. any professional body with which the service provider or the person responsible for the service provider is registered, and
3. any applicable professional or ethical rules and the means to access them.

Where prices are indicated in connection with electronic services, this shall be done in a clear and unambiguous manner. In addition, it shall be specified whether prices are inclusive of tax and delivery costs. If electronic services are directed towards Icelandic consumers only, taxes shall be included in the price.

Article 7

Information Relating to Marketing

Service providers shall ensure that information relating to marketing which forms a part of or constitutes an electronic service is presented so as to make the natural or legal person responsible for the marketing readily identifiable.

Promotional offers, competitions and games shall be clearly and unambiguously presented as such. The same applies to conditions which need to be met to qualify for an offer or participation in a competition or game.

Chapter IV

Electronic Contracts

Article 8

Electronic Contracts Equivalent to Written Contracts

Where written contracts are required by law, administrative provisions or for other reasons, such contracts shall be replaceable by an electronic contract, provided that the contract is available to both parties and in preservable form.

The provisions of Paragraph 1 shall apply also to requirements for written notifications or other actions required of parties to a contract in connection with their contractual relationship and which, under law or administrative provisions or for other reasons, must be in writing.

The provisions of Paragraphs 1 and 2 do not apply to contracts governed by family law or by the law of succession, contracts requiring stamps and contracts that create or transfer rights in real estate, except for rental rights. Furthermore, the provisions do not apply to public registration or notarial acts.

Article 9

Obligation to Inform at the Time of Ordering

Service providers shall make available the following information in a clear and unambiguous manner before the recipient of a service places an order:

1. what technical steps need to be taken to conclude a contract,
2. whether the service provider will preserve the contract made,
3. whether and then by which means the contract will be accessible,
4. technical means for identifying and correcting input errors prior to the placing of the order,
5. the languages offered for the conclusion of the contract, and
6. the code of conduct to which the service provider subscribes and the means of accessing it electronically.

The provisions of Paragraph 1 may be derogated if no party to a contract is a consumer. The provisions shall not apply to contracts concluded exclusively by exchange of electronic mail or equivalent means.

General contract terms and general conditions shall be made available in a way that allows the recipient of the service to store and reproduce them.

Article 10

Confirmation of Receipt of an Order

Service providers shall acknowledge the receipt of an order from the recipient of a service promptly by electronic means.

An order and acknowledgement of receipt are deemed to be received when the parties to whom they are addressed are able to access them.

The provisions of Paragraphs 1 and 2 may be derogated if no party to the contract is a consumer. The provisions of Paragraph 1 shall not apply to contracts concluded exclusively by exchange of electronic mail or equivalent means.

Article 11

Other Obligations Before an Order is Placed

Service providers shall make available to the recipient of the service an efficient and accessible technical means of identifying and correcting input errors prior to the placing of an order.

The provisions of Paragraph 1 may be derogated if no party to the contract is a consumer. The provisions shall not apply to contracts concluded exclusively by exchange of electronic mail or equivalent means.

CHAPTER V

Limits on Liability of Intermediaries

Article 12

Limits on Liability in Respect of Conduit

A service provider who transmits information provided by the recipient of a service over a communications network or provides access to a communications network shall not be held liable for the transmission of the information, provided that the service provider:

1. does not initiate the transmission
2. does not select the receiver of the transmission and
3. neither selects nor modifies the information transmitted.

The provisions of Paragraph 1 apply to automatic, intermediate and transient storage of the information transmitted, provided that:

1. the storage is unavoidable for the transmission and
2. the information is not stored for longer than necessary for the transmission.

Article 13

Limits on Liability in Respect of Caching

A service provider who transmits information provided by the recipient of the service over a communication network shall not be liable for the automatic, intermediate and transient storage of that information, performed for the sole purpose of making more efficient the transmission of the information to other recipients of the service, provided that the service provider:

1. does not modify the information
2. complies with the conditions on access to the information,
3. complies with recognised rules of the industry relating to the updating of the information, and
4. does not interfere with the lawful use of recognised technology in the industry used to obtain information on the use of the information.

The limits on liability pursuant to Paragraph 1 are subject to the service provider removing or disabling access to the information immediately upon obtaining:

1. actual knowledge of the fact that a court or an administrative authority has ordered the removal of the information or disablement of access to it, or
2. actual knowledge of the fact that the information has been removed from the network at the initial source of the transmission, or access to it has been disabled there.

Article 14

Limits on Liability in Respect of Hosting

A service provider who hosts information provided by the recipient of the service is not liable for the information provided that he promptly removes it or disables access to it on receiving:

1. knowledge that a county magistrate has placed an injunction on the hosting of the information or a court has ruled on its removal or disablement of access to it,
2. notification pursuant to Article 15 in the event of a purported violation of copyright legislation or
3. knowledge of information containing child pornography.

The provisions of Paragraph 1 on limitation of liability shall not apply when the recipient of the service is acting under the authority or the control of the service provider.

Article 15

Notification of Service Provider

Notification under Item 2 in Paragraph 1 of Article 14 shall include:

1. the name of the sender, address and further information which makes it possible for the service provider to contact the sender,
2. the name of the rightholder, address and further information which makes it possible for the service provider to contact the rightholder,
3. identification and location of the information for which removal or disablement of access is requested,
4. identification of the intellectual property or performance rights forming the basis for the request,
5. a statement to the effect that the information in the notification is correct,
6. a statement to the effect that the sender is a rightholder or derives his authority from the rightholder,
7. signature of the sender.

In the event of substantial flaws in the notification pursuant to Paragraph 1, the service provider is not under obligation to comply. If the flaws in the notification are minor, the service provider shall promptly invite the sender to make amends. If the sender does not respond to the invitation, the notification shall have no effect on the liability of the service provider.

Article 16

Notification to Recipients of Services

A service provider shall notify the recipient of a service of the removal of information or disablement of access to information pursuant to Article 14 as soon as it takes place and send him a copy of the notification under Article 15. He shall also notify the recipient of the service of his right to send a counternotification pursuant to Article 17.

Article 17

Access to Information Renewed

In the event that the recipient of a service believes that there are no grounds for the removal of or disablement of access to information, he may request that the service provider renew access to the information. This shall be done by means of a counternotification containing the following:

1. the name of the recipient of the service, address and further information which enables the service provider to contact him,
2. the circumstances of the case and reasoning for the request of the recipient of the service.
3. identification of the information for which renewal of access is requested and its location, and
4. signature of the recipient of the service.

When a service provider has received a counternotification which is free of substantial flaws, he shall notify the sender of a request pursuant to Article 15 without undue delay and send him a copy of the counternotification. The sender of the request shall also be notified that access to the information will be provided again unless notification is received within two weeks of the instigation of court proceedings. If the service provider receives no knowledge of the instigation of court proceedings in the case within two weeks of sending notification pursuant to this paragraph he shall promptly comply with the request for access to the information to be renewed.

In the event of substantial flaws in a request pursuant to Paragraph 1, the service provider is not under obligation to comply. If the flaws in the request are minor, the service provider shall give the sender an opportunity to make amends.

Article 18

Liability for Damages

In the event that a court concludes that the removal of information or disablement of access to information was unjustified, the person requesting the removal or disablement of access shall compensate for the damage and loss, including any damage to creditworthiness and business interest, which can be attributed to the removal or disablement of access. The same applies to a party who has requested renewal of access to information if a court decides that such action was unjustified. Damages may be awarded on a discretionary basis if it is clear that financial damage has been done, but the amount of the damage cannot be proven.

CHAPTER VI

Miscellaneous Provisions

Article 19

Surveillance

Compliance with the provisions of Articles 6-7 and 9-11 hereof is subject to the surveillance of the Competition Authority. Violation of the provisions hereof are subject to the provisions of the Competition Act concerning the remedies of competition authorities, administrative fines and procedure.

Article 20

Contact Point

The Ministry of Commerce shall serve as a contact point in respect of co-operation with other Member States of the European Economic Area as regards electronic commerce. The Ministry of Commerce shall also serve as a contact point where recipients and service providers may obtain general information on electronic services, including contractual rights and obligations as well as on the complaint and redress mechanisms available in the event of disputes, and details of authorities, associations or organisations from which they may obtain further information. The Ministry may entrust the role of contact point under this provision to other parties pursuant to further rules established by the Minister.

Article 21

Amendment to the Data Protection Act

Following paragraph 2 of Article 28 of the Act on the Protection of Individuals with regard to the Processing of Personal Data No. 77/2000, a new clause is added as follows:

All direct mail sent by electronic means shall be clearly identifiable as such immediately on receipt.

Implementation

This Act is enacted taking into consideration the decision of the EEA Joint Committee No. 91/2000 amending Annex XI to the EEA Agreement of 2 May 1992, and in order to incorporate into Icelandic law the provisions of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce). This Act has been announced pursuant to the provisions of Directive 98/34/EC on the provision of information in the field of technical standards and regulations.

Article 22
Entry into Effect

This act shall take effect immediately.

Article 23
Amendment to the Act on the Protection of Individuals with regard to the Processing of Personal Data No. 77/2000

A new clause is added to Paragraph 4 of Article 28, as follows: All direct mail sent by electronic means shall be clearly identifiable as such immediately on receipt.

Article 24
Amendment to the Act on Medical Doctors No. 53/1988

Paragraph 1 of Article 17 shall read as follows:

A doctor may only advertise his/her medical activities through factual and unobtrusive advertisements on commencement of work or in the event of changes in address or consultation hours. A doctor may identify himself by name, speciality, address, telephone and consultation hours on door signs, name cards and prescription forms.

Article 25
Amendment to the Act on Dental Medicine No. 38/1985

Article 11 of the Act shall read as follows:

Dentists shall not advertise their activities as dentists in any way. However, the opening of a dental clinic may be advertised unobtrusively. Dentists and their professional association shall oppose the publication of their comments or interviews with them or articles on them in newspapers or magazines for advertisement purposes. If this cannot be prevented, they or their professional association shall promptly correct any overstatement.

Temporary provisions.

The provisions of Article 19 of this Act shall be reviewed when five years have passed from their entry into effect based on the experience of the surveillance and its extent.