

Electronic Commerce Act

Promulgated, State Gazette No. 51/23.06.2006, effective 24.12.2006, amended and supplemented, SG No. 105/22.12.2006, effective 1.01.2007, amended, SG No. 41/22.05.2007, SG No. 82/16.10.2009, effective 16.10.2009, SG No. 77/4.10.2011, supplemented, SG No. 105/29.12.2011, effective 29.12.2011, amended, SG No. 57/28.07.2015, supplemented, SG No. 94/13.11.2018, amended, SG No. 17/26.02.2019

Text in Bulgarian: Закон за електронната търговия

Chapter One GENERAL PROVISIONS

Subject of regulation

Article 1. (1) This act regulates public relations, which are related to the realization of the electronic commerce.

(2) For the purposes of this act, electronic commerce shall mean providing services for the information society.

(3) (Supplemented, SG No. 105/2011, effective 29.12.2011) Services for the information society are such services, including commercial communications, which are usually onerous and are provided from a distance by electronic means upon an explicit declaration of the recipient of the service.

(4) The provisions of this act shall not apply in the case of regulating relations in providing services for the information society, connected with:

1. assessment and collection of the public receivables;
2. (amended, SG No. 41/2007) personal data protection, including in the field of electronic communications;
3. agreements, decisions and coordinated practices within the meaning of Article 9 of the Protection of Competition Act;
4. notarial practice and other professional activities, related to the exercising of official authority;
5. representation before the court;
6. games of chance.

Freedom of providing services for the information society

Article 2. The services for the information society shall be provided freely, unless otherwise is provided by law.

Provider and recipient of services for the information society

Article 3. (1) Service provider shall be any natural or legal person that provides services for the information society.

(2) Service recipient shall be any natural or legal person that uses information society services with a professional or any other purpose, including for the purposes of seeking information or granting access to it.

Chapter Two

OBLIGATIONS FOR GRANTING ACCESS TO INFORMATION

General information

Article 4. (1) The provider of information society services shall be under the obligation to grant the service recipients and the competent authorities unobstructed, direct and permanent access to following information:

1. its name or title;
2. its permanent address or its seat and registered office;
3. the address where it operates if it differs from the address under item 2;
4. contact information, including telephone number and e-mail address for the purposes of establishing direct and timely contact with it;
5. data for registration in a commercial or any other public register;
6. information for the body, which exercises control over its activities, if these activities are subject to notification, registration or licensing regime;
7. when it exercises a regulated profession - information for the chamber, the professional union or the organization of which the provider is a member or with which it is registered, the professional title and the country in which it has been granted, as well as a reference to the applicable provisions regarding the right to exercise the craft or the profession and an explanation of the means to access them;
8. respective indication if it has been registered under the Value Added Tax Act;
9. any other information, provided for in a statutory instrument.

(2) Where the information society services refer to prices, these are to be indicated in a clear and unambiguous manner. The service provider shall be under the obligation to indicate whether or not the prices are inclusive of taxes, fees and expenditures, which form the final price.

Storing information in the terminal equipment of individuals and access thereto.

Article 4a. (New, SG No. 105/2011, effective 29.12.2011) (1) The information society service provider shall store information or gain access to information stored in the terminal equipment of the service recipient, provided that:

1. (amended, SG No. 17/2019) the information society service recipient has been presented with a clear and detailed information in accordance with Article 13 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ, L 119/1 of 4.5.2016);

2. the information society service recipient shall have the possibility to refuse the storage or access to the information.

(2) In the cases under paragraph (1), the information society service providers shall grant the service recipient the possibility to receive, at any time, information on the data stored in the terminal equipment.

(3) In the cases of subsequent storage of information or receipt of access to information by the same provider, the requirements under paragraph (1) shall not be mandatory, provided that the service recipient has not raised an objection.

(4) The requirements under paragraph (1) shall not apply to the storage of information or granting access thereto when such is needed for:

1. transmission of a communication over an electronic communications network,
2. providing an information society service, specifically requested by the information society service recipient.

Commercial communication

Article 5. (1) Commercial communication within the meaning of this Act is advertising or any other communication, designed to promote, directly or indirectly, the goods, services or reputation of the person, performing a commercial or craft activity or exercising a regulated profession.

(2) The independent usage of the following does not constitute commercial communication within the meaning of Article 1:

1. information, assuring direct access to the person's activities, like the name of its domain or e-mail address;

2. messages for the goods, services or for the reputation of the person, the information for which has been collected in an independent manner with no payment made for this.

(3) The commercial communication that is a part of or constitutes an information society service must meet the following requirements:

1. to be easily identifiable as commercial ones;
2. to enable clear identification of the natural or legal persons on whose behalf it has been made;

3. to define clearly and unambiguously the conditions for participation in promotional offers such as discounts, premiums and gifts, if such are included;

4. to assure easy access to clear and unambiguous conditions for participation in competitions and games with declared prizes, if they contain such information;

5. to contain any other information, stipulated in other statutory instruments.

Unwanted commercial communication

Article 6. (1) A service provider who sends unwanted commercial communication via e-mail without addressee's preliminary consent shall be under the obligation to provide clear and unambiguous identification of the commercial communication as an unwanted one yet on the entrance with the receiver.

(2) (Amended, SG No. 105/2006, effective 24.12.2006) Commission for Consumer Protection shall keep an electronic register of the e-mail addresses of the legal persons that do not wish to receive unwanted commercial communication, following a procedure established in a regulation adopted by the Council of Ministers.

(3) Sending unwanted commercial communication to e-mail addresses, entered into the register under paragraph (2), shall be forbidden.

(4) Sending unwanted commercial communication to consumers without their preliminary consent shall be forbidden.

Commercial communication for persons with regulated professions

Article 7. (1) Persons, exercising regulated professions, may use commercial communication as part of or as an information society service.

(2) The Commercial communication under paragraph (1) shall not contradict the professional rules and the Ethic codes for behaviour of the persons, exercising regulated professions, in particular the rules for independence, dignity and honour of the profession, professional secret and loyal behaviour to the clients and to the other members of the profession.

Chapter Three

PROVIDER'S OBLIGATIONS UPON CONCLUSION OF CONTRACTS THROUGH ELECTRONIC MEANS

Obligations for granting access to information

Article 8. (1) Upon an offer for concluding a contract through electronic means, the service provider shall inform in advance the service recipient by clear, comprehensible and unambiguous manner about:

1. the technical steps of the conclusion of the contract and their legal consequences;
2. whether or not the contract will be kept by the service provider and what shall be the way to access it;
3. the technical means for identifying and correcting input errors, before the statement for conclusion of the contract has been made;
4. languages, offered for the conclusion of the contract.

(2) The service provider shall be under the obligation to indicate the way for electronic access to the Ethic code for behaviour that he observes.

Access to the general terms and the content of the contract

Article 9. The service provider shall be under the obligation to place at recipient's disposal the general terms and the content of the contract in a way that allows him to store and reproduce them.

Obligations upon the statement for conclusion of the contract

Article 10. (1) The service provider shall make appropriate, efficient and accessible technical means available to the recipient of the service to enable him to identify and correct input errors, before the statement for conclusion of the contract is made by the service recipient.

(2) The service provider shall acknowledge the receipt of the recipient's statement for conclusion of the contract by electronic means without any unjustified delay.

Receipt of the statement

Article 11. The statement for conclusion of the contract and the acknowledgement of receipt are deemed to be received when the parties to whom they are addressed are able to access them.

Exclusions

Article 12. (1) The provisions of Articles 8 and 10 shall be applied mandatory in the cases where the service recipient is a consumer.

(2) The provisions of Articles 8 and 10 shall not apply to contracts that parties enter into exclusively by electronic mail or other similar instruments for exchange of individual communication.

Chapter Four

LIABILITY INCURRED BY THE PROVIDERS OF THE

SERVICE FOR THE INFORMATION SOCIETY

Liability upon providing services for access and transmission

Article 13. (1) (Amended, SG No. 41/2007) Upon providing access to or transmission through electronic communication network the service provider shall not be liable for the content of the information transmitted and for the activities of the recipient of the service, if the provider:

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

(2) (Amended, SG No. 41/2007) Providing access to or transmission through electronic communication network referred to in paragraph (1) also covers an automatic, intermediate and transient storage of the transmitted information, as this shall take place for the sole purpose of carrying out the transmission through the electronic communication network and the information shall not be stored for any period longer than the one that is reasonably necessary for the transmission.

Liability upon providing services for automated search of information

Article 14. (1) A service provider who provides automated search of information shall not be liable for the content of the derived information if the provider:

1. does not initiate the transmission of the derived information;
2. does not select the receiver of the derived information, and
3. does not select or modify the derived information.

(2) Paragraph (1) shall not apply if the information resource from which the information is derived belongs to the provider or related to him person.

Liability upon intermediate storage (caching)

Article 15. (Amended, SG No. 41/2007) A service provider who transmits information entered by a recipient of the service into a electronic communication network shall not be liable for the automatic, intermediate and temporary storage of such information or for the content of such information, needed for the sole purpose of making more efficient the information's onward transmission to other recipients of the service upon their request, if the service provider:

1. does not modify the information;
2. complies with conditions for access to the information;
3. complies with rules regarding the update of the information, specified in a manner widely recognized;
4. does not interfere with the lawful use of widely recognized technology to obtain data for the use of the information;
5. acts expeditiously to remove or to disable access to information he has stored upon obtaining an actual knowledge of the fact that:
 - a) the information has been removed from the network of the primary source, or access to it has been disabled, or
 - b) there is an act of a competent state authority that has ordered such removal of the information or disablement of the access to it, when this has been set forth in a law.

Liability for storage of somebody else's information (hosting) and for electronic references to somebody else's information (linking)

Article 16. (1) A provider of a service, that constitutes storage of information, when such storage takes place at the request of a recipient of the service who has supplied the information, shall not be liable either for the content of the information stored or for the activities of the recipient of the service, if the service provider:

1. does not have an actual knowledge of the unlawful character of the activities or the information, or

2. is not aware of the facts or circumstances from which the unlawfulness of the activities or information is apparent.

(2) Paragraph (1) shall not apply if:

1. the recipient of the service is related to the service provider person;

2. the provider has learned or has been informed about the unlawful character of the information or has been informed by a competent state authority about the unlawful character of the activities of the recipient and has not undertaken immediate actions to remove or to disable the access to the information; this does not exempt the provider from the derived from a law obligation to save the information.

(3) (Supplemented, SG No. 94/2018) Upon a request of any competent state authority in the cases, established by the law, the provider shall be under the obligation to provide any information concerning the recipient of the service and his activities and in view of the swiftness and urgency of a possible cyberattack, cyberincident or cybercrisis, the communication must take place via electronic means that are protected reliably enough.

(4) Paragraphs (1) - (3) shall apply, *mutatis mutandis*, in the cases where the service provider leaves access to somebody else's information through electronic link.

Absence of a general obligation to monitor the information

Article 17. The service provider is not obligated either to monitor the information that he stores, transmits or makes accessible when providing services for the information society or to be in search of facts and circumstances that indicate unlawful activities.

Services provided free of charge

Article 18. The provisions of Articles 13 - 17 shall apply also to providers of information society services that are provided free of charge.

Chapter Five

APPLICABLE LAW

Applicable law in providing information society services

Article 19. (Effective as from the date of entry into force of the Treaty concerning the Accession of the Republic of Bulgaria to the European Union) (1) The requirements for commencement and fulfillment of the activity for providing information society services shall be regulated by the law of the country where the place of business of the service provider is, if it is within the territory of a state - member of the European Union.

(2) A place of business is the place where the service provider carries out an economic activity for unlimited period of time. The presence or the use of technical means and technologies, which are necessary the service to be provided are not enough in themselves to

determine the place of business of the service provider.

(3) Paragraphs (1) and (2) shall not apply in respect to:

1. the requirements concerning characteristics of the goods and their delivery or concerning the services that are not provided by electronic means;

2. copyright and neighboring rights, industrial property rights, databases rights and the rights of the topologies of integrated circuits;

3. emissions of electronic money, issued by issuers of instruments for electronic money, which are exempted from the common requirements for licensing;

4. (amended, SG No. 77/2011) the legal regulations, concerning the advertisement of the units of collective investment schemes of the country where this securities are being traded;

5. the insurance contracts;

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

7. the contractual obligations on the consumer contracts;

8. the requirements for the form for validity of the contracts, which institute or transfer rights in rem, which are regulated by the law of the country where the estate is located;

9. the permissibility of the unwanted commercial communication, which are being sent via e-mail.

Chapter Six

CONTROL AND INTERACTION

Control

Article 20. (1) (Previous text of Article 20, amended, SG No. 105/2006) The Commission for Consumer Protection shall exercise comprehensive control over the observance of this act and the regulation referred to in Article 6, paragraph (2).

(2) (New - SG No. 105/2006) While performing their office duties, the officials of the Commission for Consumer Protection shall be entitled to:

1. access to all the documents directly or indirectly relevant to a breach of this Act or of the legislation of the EU Member States transposing the requirements of Directive 2000/31/EC of the European Parliament and of the Council on Electronic Commerce, regardless of the form of the document;

2. order any person to provide information on a breach as per Item 1, that he knows of;

3. carry out on-site inspections.

(3) (New - SG No. 105/2006) When performing their office duties the officials under Paragraph 2 shall be under the obligation to keep the office, bank, insurance, professional or trade secret and not to disclose data from the inspections prior to their closure, as well as not to use the information from the inspection for purposes different than the originally intended ones.

(4) (New - SG No. 105/2006) The Chairperson of the Commission for Consumer Protection shall have the right to:

1. order the offender in writing to discontinue the breach as per Item 1 of Paragraph 2;

2. require from the offender to make a statement that he will discontinue the breach as per Item 1 of Paragraph 2 and, if necessary, oblige him to disclose the statement in the public domain;

3. order the termination or prohibition of any breach as per Item 1 of Paragraph 1 and, if necessary, disclose the order for termination or prohibition of the breach in the public domain.

Interaction and co-operation

Article 21. (1) (Amended, SG No. 105/2006, SG No. 82/2009, effective 16.10.2009) The Minister of Transport, Information Technology and Communications shall interact and co-operate with the competent authorities of the states - members of the European Union and with the European Commission on issues related to the information society services.

(2) (Amended, SG No. 105/2006) The Chairperson of the Commission for Consumer Protection shall arrange for and maintain information for the purposes of this Act, which shall be uploaded on the official web site of the Commission for Consumer Protection and shall contain:

1. general information on the rights and obligations of the suppliers and receivers of information society services and the procedure of resolving disputes between them;

2. information on the authorities and persons that can provide additional information or render practical assistance.

(3) (Amended, SG No. 105/2006, SG No. 82/2009, effective 16.10.2009) The Ministry of Transport, Information Technology and Communications and the Commission for Consumer Protection shall make it possible that they be contacted on the issues as per Paragraphs 1 and 2, on which they are competent, at least via electronic means.

Chapter Seven DISPUTES

Claims for protection of the consumers

Article 22. (Amended, SG No. 57/2015) Consumers protection commission and the associations for protection of the consumers shall bring actions for discontinuance or prohibition of acts and commercial practices under this act, which infringe on the collective interests of consumers, and actions for compensation in accordance with the terms and procedures established by Chapter nine, Section IV of the Consumer Protection Act.

Chapter Eight ADMINISTRATIVE PENAL PROVISIONS

Article 23. (1) Service provider who have violated or allowed a violation of Article 4, Article 5, paragraph (3), Article 8, paragraph (1), Article 9 and Article 10 shall be imposed a fine in amount from BGN 200 to 1,000, unless the act constitutes a criminal offence.

(2) In the cases referred to in paragraph (1) if the offender is a legal person or a sole proprietor, a property sanction amounting from BGN 500 to 2,500 shall be imposed.

(3) In case of repeated violation the fine under paragraph (1) shall be amounting from BGN 500 to 1,500 and the property sanction under paragraph (2) - from BGN 1,000 to 4,000.

Article 24. (1) Service provider who have violated or allowed a violation of Article 6, paragraphs (1), (3) or (4) shall be imposed a fine in amount from BGN 250 to 1,500, unless the act constitutes a criminal offence.

(2) In the cases referred to in paragraph (1) if the offender is a legal person or a sole proprietor, a property sanction amounting from BGN 500 to 2,000 shall be imposed.

(3) In case of repeated violation the fine under paragraph (1) shall be amounting from BGN 500 to 2,500 and the property sanction under paragraph (2) - from BGN 1,000 to 4,000.

Article 24a. (New, SG No. 105/2006) (1) In case of a failure to execute an order as per Article 20, Paragraph 2, Item 2 and Paragraph 4, the culpable persons shall be sanctioned to pay a

fine in the amount of BGN 250 to 1,000, while sole traders and legal persons shall be sanctioned to make a penalty payment in the amount of BGN 500 to 2,000.

(2) In case of a repeat offence under Paragraph 1, the culpable persons shall be sanctioned to pay a fine, while sole traders and legal persons shall be sanctioned to make a penalty payment in a double amount.

Article 25. (1) (Amended, SG No. 105/2006, effective 24.12.2006) The penalty determination acts shall be drawn up by officials specified by the chairman of the Commission for Consumer Protection.

(2) (Amended, SG No. 105/2006, effective 24.12.2006) The penal ordinances shall be issued either by the chairman of the Commission for Consumer Protection or by authorized by him person - member of the commission.

(3) Determining the violations, issuance, appeal and implementation of the penal ordinances shall be performed following the procedure of the Administrative Violations and Sanctions Act.

SUPPLEMENTARY PROVISION

§ 1. Within the meaning given by this Act:

1. "Providing services from a distance" is providing services when the parties are not at the same time in the same place.

2. "Providing services by electronic means" is providing services while each of the parties uses devices for electronic processing, including digital compression and storage of information and the service is realized entirely by using a wire, radio-waves, optical or other electromagnetic means.

3. " By explicit declaration of the recipient of the service" means that the service shall be provided only when an explicit statement that declares the request for use of the service has been made by the receiver.

4. "Consumer" is a consumer within the meaning of § 13, item 1 of the supplementary provisions of the Consumer Protection Act.

5. "Related to the service provider person" is a related person within the meaning of § 1 of the supplementary provisions of the Commerce Act.

6. "Name of domain" is a letter or letter-figure designation of an electronic address which allows the identification of a resource, computer or a group of computers within the internet by means of standardized internet protocol for data transmission.

7. "Regulated profession" is a regulated profession within the meaning of § 4c of the supplementary provisions of the Higher Education Act.

8. "E-mail" is an electronic instrument for storage and transfer of electronic communication via the internet through standardized protocols.

9. "Electronic link" means a connection, which is indicated on a certain web site, that allows automated reference to other web site, information resource or object through standardized protocols.

10. (New, SG No. 105/2006) "Repeat" offence shall be the one committed within a period of one year after the effectiveness date of the penalty decree imposing a penalty for a violation of the same kind.

FINAL PROVISIONS

§ 2. In the Code of Civil Procedure (promulgated in the Transactions of the Presidium of

the National Assembly No. 12 of 1952; amended in 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; corrected in No. 99 of 1961; amended in the State Gazette 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), in Article 126a, paragraph 3 on the end shall be added "as well as the crimes resulting from providing services for the information society under the Electronic Commerce Act".

§ 3. In the Consumer Protection Act (promulgated, State Gazette No. 99 of 2005, amended, SG No. 30 of 2006) in Article 186, paragraph 2 the following amendments and supplements shall be made:

1. A new item 5 shall be created:

"5. Electronic Commerce Act;"

2. Former item 5 shall be renumbered into item 6.

§ 4. In the Telecommunications Act (promulgated, State Gazette No. 88 of 2003, amended, SG No. 19, 77, 88, 95, 99 and 105 of 2005, SG No. 17, 29 and 34 of 2006) in Article 19 a new paragraph 5 shall be created:

"(5) The commission shall control the activities upon providing information society services and shall keep a register of the legal persons, which do not wish to receive unwanted commercial communication, following the procedure established in the Electronic Commerce Act."

§ 5. The Council of Ministers shall adopt the regulation referred to in Article 6, paragraph (2) within six months after the promulgation of this Act in the State Gazette.

§ 6. This Act shall enter into force 6 months after the promulgation thereof in the State Gazette, except for Article 19, which shall take effect as from the date of entry into force of the Treaty concerning the Accession of the Republic of Bulgaria to the European Union.

This Act was adopted by the National Assembly on 9 June 2006 the official seal thereof was affixed hereunder.

FINAL PROVISIONS

to the Distance Marketing of Financial Services Act
(SG No. 105/2006, effective 1.01.2007)

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§ 12. This Act shall enter into force on January 1, 2007 except for § 4, items 1 - 5, which shall take effect as from the day of entry into force of the Electronic Commerce Act.