

Electronic Commerce Law

The law was published in the Official Gazette of the Republic of Montenegro, no. 80/2004 and Official Gazette of Montenegro, nos. 41/2010 and 56/2013. See: Art. 111 of the Law - 40/2011-1.

I. GENERAL PROVISIONS

Contents of the law

Article 1

This Law regulates the provision of services normally provided for remuneration, at a distance, by means of electronic equipment for the processing and storage of data, and at the individual request of a recipient of a service (hereinafter referred to as the “information society services”), liability of information society services provider and rules regarding the conclusion of contracts in electronic form.

Areas to which the law does not apply

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, games of chance which involve wagering a stake with monetary value, including lottery games, casino games, betting and slot machine games, unless otherwise provided by a separate law.

Meaning of certain terms and expressions

Article 3

Certain terms and expressions used in this Law have the following meaning:

- **data** - information, message and document created, sent, received, recorded, stored or displayed by electronic, optical or similar means, including transmission over the Internet, electronic mail and telefax;
- **information society service** - service provided for remuneration, at a distance, by means of electronic equipment for the processing and storage of data, and at the individual request of a recipient of a service, in particular online sales of goods and services, offering data on the Internet, advertising via the Internet, search engines, as well as enabling search for data and services transmitted by electronic network, providing access to the network or storage of user data;
- **service provider** - legal or natural person providing information society services;
- **recipient of the service** - any natural or legal person who, for professional ends or otherwise, uses an information society service;
- **contract in electronic form** - contract which is concluded, sent, received, terminated, cancelled, accessed and displayed electronically by natural and legal persons using electronic, optical or similar means, including transmission over the Internet;
- **commercial communication** - any form of communication designed to promote, directly or indirectly, the goods, services or image of a legal or natural person

engaged in registered activity, with the exception on information which:

- enable direct access to the activity of the legal or natural person, including in particular a geographic address, a domain name or an electronic mail address;
- relate to the goods, services or image of the person, compiled in an independent manner, particularly when this is without financial consideration;
- **consumer** - any natural person who enters into a legal transaction on the market for purposes other than those of his trade, business or profession.

Application of regulations

Article 4

The information society service provider established in Montenegro shall act and provide services in accordance with the law.

Service providers established in a Member State

Article 5

An information society service provider established in a Member State of the European Union shall provide services in Montenegro in accordance with the regulations governing the following areas:

- 1) copyright, neighbouring rights, as well as industrial property rights;
- 2) the emission of electronic money;
- 3) collective investment in transferable securities and their advertising;
- 4) activity of insurance companies;
- 5) contracts creating or transferring rights in real estate;
- 6) consumer contracts;
- 7) the freedom of the parties to choose the law applicable to their contract;
- 8) the permissibility of unsolicited communications by electronic mail.

Freedom to provide services

Article 6

Information society services may be supplied freely.

No special permit, approval or concession shall be required to supply information society services.

The activity of the information society service provider registered in the territory of Montenegro upon entry in the appropriate register shall be designated as: information society services.

Freedom to provide services of a service provider established in a Member State

Article 6a

The state administration body responsible for the information society (hereinafter referred to as "the competent authority") may take one or more measures restricting the freedom to provide information society services to a service provider established in a Member State, whose service poses a serious threat to:

- 1) law and order, in particular for the carrying out of investigations, the detection and prosecution of criminal offenders, the protection of minors and the fight against incitement to hatred or intolerance based on race, sex, religion or nationality and violations of the dignity of the person;

- 2) protection of public health, i.e., human life and health;
- 3) protection of security and defence of Montenegro;
- 4) consumer protection, which includes investors.

The competent authority shall notify the competent authority of the Member State and the European Commission of its intention to take the measures referred to in paragraph 1 of this Article.

If the competent authority of the Member State fails to take appropriate measures within 30 days from the date of notification referred to in paragraph 2 of this Article, the competent authority may take measures to restrict the freedom to provide information society services, while keeping the competent authority of the Member State and the European Commission informed.

By way of exception to paras. 2 and 3 of this Article, the competent authority may take the measures referred to in paragraph 1 of this Article, without prior notification of the competent authority of the Member State, if there is a serious risk of harm due to delays in taking measures.

In the case referred to in paragraph 4 of this Article, immediately and no later than 15 days from the date of taking measures, the competent authority shall notify the competent authority of the Member State in which the service provider is established and the European Commission, with an explanation of the reasons for urgent action.

The competent authority shall decide on the termination of the measure restricting the provision of information society service, after the termination of the reasons for which the measure was taken immediately, at the request of the applicant or of the European Commission.

Measures restricting the freedom to provide services

Article 6b

The restrictive measures referred to in Article 6a, paragraph 1 of this Law are:

- 1) publishing notifications on possible illegal activities of the information society service provider and on the procedure for their termination;
- 2) an order to the service provider to take measures to eliminate the identified irregularities;
- 3) ban on performing certain actions;
- 4) blocking the operation of computers, or databases and peripherals;
- 5) temporary ban on performing activities;
- 6) filing a criminal or other appropriate report;
- 7) an order to a legal entity performing public services (provision of electronic communications services, and the like) to suspend the delivery, i.e. the provision of services necessary for the performance of activities, to the service provider to whom a measure prohibiting the performance of activities has been imposed.

The measures referred to in paragraph 1 of this Article shall be taken ex officio or at the request of a legal or natural person whose rights have been threatened or violated, commensurate to the threat for the elimination of which the measure is being taken.

II. INFORMATION REQUIREMENTS AND COMMERCIAL COMMUNICATION

Required information

Article 7

The information society service provider shall render the following information available free of charge, in a form and in a manner that is directly and permanently electronically accessible to the recipients and competent state administration bodies:

- 1) name and surname for a natural person, or the name of the service provider;
- 2) permanent residence for a natural person, or head office for a legal entity or business establishment in Montenegro (place, street and number);
- 3) other details of the service provider, including his electronic mail address, which allow him to be contacted rapidly and communicated with in a direct and effective manner;
- 4) where the service provider is registered in the appropriate register, his registration number, or equivalent means of identification in that register;
- 5) where the activity of the service provider is subject to an authorisation scheme, the particulars of the relevant supervisory authority (name and head office);
- 6) as concerns the regulated professions:
 - any professional body or similar institution with which the service provider is registered;
 - the professional title and the state where it has been granted;
 - a reference to the applicable professional rules in the state of establishment and the means to access them;
- 7) tax number where the service provider undertakes an activity that is subject to VAT.

If the information society service provider refers to prices, these are to be indicated clearly and unambiguously and, in particular, must indicate whether the stated prices are inclusive of delivery costs, other service charges, taxes and other costs that affect them.

Commercial communications

Article 8

Information society service providers shall ensure that every piece of data from a commercial communication that is part of, or constitutes, an information society service, complies with the following conditions:

- 1) the commercial communication shall be clearly identifiable as such at the time when it is received by the recipient;
- 2) the person on whose behalf the commercial communication is made shall be clearly identifiable;
- 3) any promotional offer from a commercial communication (including discounts and gifts), shall be clearly identifiable as such;
- 4) invitations to promotional competitions or games shall present the conditions for participation accurately and unequivocally.

Unsolicited commercial communication

Article 9

The use of e-mail or other equivalent means for sending an unsolicited commercial

communication (spam) shall be allowed only with the prior consent of the person for whom this type of message is intended, in accordance with the law governing electronic communications.

Unsolicited commercial communications shall be clearly and unambiguously identifiable as such as soon as they are received.

Service providers undertaking unsolicited commercial communications by e-mail shall establish an opt-out register of its recipients not wishing to receive such commercial communication.

The provider of unsolicited commercial communications may not send such communications electronically to the recipients referred to in paragraph 3 of this Article.

III. DOCUMENTS IN ELECTRONIC FORM

Form and validity of the contract

Article 10

The contract may be concluded electronically, i.e., in electronic form.

The offer and acceptance of the offer may be given electronically, i.e., in electronic form.

Where an electronic message or electronic format is used to conclude a contract, the validity of such a contract may not be challenged just because it is in electronic form.

Contracts to which the law does not apply

Article 11

Article 10, paragraph 3 of this Law shall not apply to:

- 1) property deeds, prenuptial agreements or marriage contracts and other contracts regulated by the law governing family relations;
- 2) property disposition contracts that require the approval of the social welfare centre;
- 3) estate planning contracts, life-long maintenance contracts and agreements related to succession, contracts on renunciation of inheritance, contracts on transfer of share of the estate before division, bequests and other contracts regulated by the law governing succession;
- 4) deeds of gift;
- 5) agreements transferring property rights to real estate or other legal transactions governing real rights to real estate, except for rental agreements;
- 6) contracts for which a separate law stipulates that they are to be made in the form of a notarial act, or writing;
- 7) guarantee agreements, if the guarantor is a person acting outside his trade, business or profession.

Subsidiary application of regulations

Article 12

Unless otherwise provided by this Law, general regulations governing contractual relations shall apply to legal relationships arising from or in connection with contracts concluded electronically or in electronic form.

Electronic signature

Article 13

When the signature of a person is required as a presumption of validity and creation of a contract, electronic communication signed with an advanced electronic signature shall be deemed to meet that requirement, in accordance with law.

Information and notifications required before concluding the contract

Article 14

The following information and notifications shall be given by the information society service provider to the potential recipient of the service prior to the information society contract conclusion, without financial consideration and in a clear, comprehensible, unambiguous and durable manner:

- 1) the different technical steps to follow to conclude the contract;
- 2) contractual provisions;
- 3) general conditions, if they are an integral part of the contract;
- 4) the languages offered for the conclusion of the contract;
- 5) codes of conduct complied with by service providers and information on how those codes can be consulted electronically;
- 6) whether or not the concluded contract will be filed by the service provider and whether it will be accessible.

The information society service provider shall ensure for the potential recipient of the service prior to the contract conclusion the technical means for identifying and correcting communication input errors prior to the submission or sending thereof.

The parties that are not consumers may agree, in mutual contractual relations, on a derogation from the paras. 1 and 2 of this Article.

Paragraphs 1, 2 and 3 of this Article shall not apply to contracts concluded exclusively by exchange of electronic mail or by equivalent individual communications.

Contract accessibility

Article 15

The information society service provider shall ensure that the contract terms and general conditions that are an integral part of the contracts concluded in electronic form are available to recipients of service in a way that allows their storage, reuse and reproduction.

Acknowledgement of receipt

Article 16

The information society service provider shall acknowledge the receipt of an electronic message containing the order or acceptance of the offer to conclude a contract without undue delay and by electronic means.

The parties that are not consumers may agree, in mutual contractual relations, on a derogation from paragraph 1 of this Article.

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

The time of the conclusion of the contract

Article 17

The contract in electronic form shall be considered concluded at the moment when the offeror receives an electronic message from the offeree containing a statement of offer acceptance.

The offer and acceptance of the offer, as well as other declarations of will made electronically, shall be considered received when the person to whom they are addressed can access them.

In the case of consumer contracts, it shall not be allowed to exclude the application of paragraph 2 of this Article.

IV. LIABILITY OF INTERMEDIARY SERVICE PROVIDERS

Exclusion of liability

Article 18

The information society service provider that only provides to the recipient of the service the service of transmission in a communication network of an electronic message, or the service of access to a communication network, shall not be liable for the content of the electronic message transmitted nor for its transmission, on condition that:

- 1) he does not initiate the transmission;
- 2) he does not select the information or the documents transmitted;
- 3) he does not exclude or modify the information contained in the message or document;
- 4) he does not select the receiver of the transmission.

The transmission of and provision of access to messages referred to in paragraph 1 shall be conducted in a way which allows automatic, intermediate and transient storage of the messages transmitted and information contained therein and provided that they are not stored for any period longer than is reasonably necessary for the transmission of messages.

Caching

Article 19

Where a service is provided that consists in the transmission in a communication network of information provided by a recipient of the service, the information society service provider shall not be liable for the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other recipients of the service upon their request, on condition that:

- 1) the provider does not modify the information;
- 2) the provider complies with conditions on access to the information;
- 3) the provider complies with rules regarding the updating of the information;
- 4) the provider does not interfere with the choice of technology for data collection, which is widely accepted and applied;
- 5) the provider acts expeditiously to remove or to bar access to the information stored upon obtaining actual knowledge that the information at the initial source of the transmission has been removed from the network, or that access to it has been barred, or that a court or another competent authority has ordered such

removal or access barring.

Hosting
Article 20

Where the information society service provider stores information provided by a recipient of the service, such service provider shall not be liable for the information stored at the request of a recipient of the service, on condition that:

- 1) the provider does not have actual knowledge nor could have had actual knowledge about the illegal activity of the recipient or the content of the information and the procedures for compensation of damages arising from the illegal activity of the recipient or the content of the information stored;
- 2) the provider, upon obtaining knowledge of illegal activities or information, acts expeditiously to remove or to disable access to the information.

Paragraph 1 of this Article shall not apply when the recipient of the service is acting under the authority or the control of the service provider (companies that have shares in each other, companies in which the same natural persons have shares, and the like).

Links
Article 21

The information society service provider that provides access to third party data via referral links shall not be responsible for that information on condition that:

- 1) the provider does not have actual knowledge nor could have had actual knowledge about the illegal activity of the recipient or the content of such information;
- 2) the provider, upon obtaining knowledge of illegal activities or information, acts expeditiously to remove or to disable access to the information.

Mandatory notifications
Article 22

When providing an information society service, the service provider that stores information shall not be obliged to monitor the information that it has stored, transmitted or made available, nor to seek actively circumstances indicating illegal activity of the recipient.

The information society service provider that stores information shall immediately inform the competent state authority upon learning of:

- the existence of reasonable suspicion of the recipient of the service undertaking illegal activities by way of using its service;
- the existence of reasonable suspicion of the recipient of the service supplying illegal information.

Based on an appropriate court or administrative act, the information society service provider that stores information shall produce all information based on which criminal offenders can be detected or prosecuted and/or the rights of third parties protected.

IVa. COOPERATION AND SETTLEMENT OF DISPUTES

Notification

Article 22a

The competent authority shall cooperate with the competent authority of the Member State and the European Commission in the field of information society services, for the purpose of electronic exchange of:

- 1) general information on contractual rights and obligations as well as on the complaint and redress mechanisms;
- 2) the details of authorities, associations or organisations from which they may obtain further information;
- 3) information requested by a Member State or the European Commission and the practical assistance.

The competent authority shall provide the necessary contact details to the Member State and to the European Commission (name and surname of the person, electronic mail address and contact address).

The competent authority shall publish on its website the final decisions of the competent state bodies and arbitral tribunal or mediation decision received, in accordance with the law governing the right to access information.

If necessary, the competent authority shall submit information on significant decisions referred to in paragraph 3 of this Article and information on the practices relating to electronic commerce and information society services to the European Commission.

The competent authority shall compile a report on contracts that cannot be concluded in electronic form, with an explanation of the reasons, which is submitted to the Government of Montenegro and the European Commission.

The report referred to in paragraph 5 of this Article shall be drawn up and submitted at least once every three years.

Code of conduct

Article 22b

The competent authority shall encourage the drawing up and adoption of codes of conduct by trade, professional and consumer associations, in particular regarding the protection of minors, persons with disability and human dignity.

The competent authority shall assess the application of codes of conduct referred to in paragraph 1 of this Article and their impact upon practices relating to electronic commerce and it shall publish the codes adopted on its website.

Judicial review

Article 22c

The courts of appropriate jurisdiction shall resolve disputes in lawsuits for the protection of information society rights on an urgent basis.

The court of appropriate jurisdiction may, at the request of any party to the dispute, decide that the final decision be published in an appropriate manner at the expense of the party requesting publication.

The court of appropriate jurisdiction shall submit final decisions regarding disputes related to electronic commerce to the competent authority.

Out-of-court dispute settlement

Article 22d

The information society service provider and the recipient of the service may resolve mutual disputes by contracting an arbitration or mediation procedure, in accordance with the law.

The competent arbitral tribunal or mediator may, at the request of any party to the proceedings, decide that the decision be published in an appropriate manner at the expense of the party requesting publication.

The arbitral tribunal or mediator shall submit the decisions to the competent authority, in accordance with the law governing arbitration procedure, or mediation and they shall transmit to that authority any other information on the practices relating to electronic commerce.

V. SUPERVISION

Supervision over the implementation of this Law

Article 23

Supervision over the implementation of this Law shall be performed by the administrative authority responsible for inspection affairs, through the inspector for information society services (hereinafter referred to as "the inspector"), in accordance with law.

For the purpose of exercising supervision, information society service providers shall allow persons authorised by the competent authority to access computer equipment and devices, and they shall promptly show or submit the necessary information and documents related to the subject matter of supervision.

VI. INFRINGEMENTS

Misdemeanours

Article 24

A fine ranging from EUR 500.00 to EUR 17,000 shall be imposed on a legal entity - the information society service provider, if it:

- 1) fails to render to the recipients and competent state administration bodies the prescribed information available free of charge, in a form and in a manner that is directly and permanently electronically accessible (Article 7);
- 2) sends an unsolicited commercial communication without the prior consent of the person for whom this type of message is intended (Article 9, paragraph 1);
- 3) fails to establish an opt-out register of its recipients not wishing to receive unsolicited commercial communications (Article 9, paragraph 3);
- 4) sends unsolicited commercial communications by e-mail to recipients of its services who have stated that they do not wish to receive unsolicited commercial communications (Article 9, paragraph 4);
- 5) fails to give the prescribed information and notifications to the potential recipient of the service prior to the information society services contract conclusion, in a clear, comprehensible, and unambiguous manner and without financial consideration (Article 14, paragraph 1);
- 6) fails to ensure that the contract terms and general conditions are available to recipients of service in a way that allows their storage, reuse and reproduction

(Article 15);

- 7) fails to immediately inform the competent state authority upon learning of the recipient of its service undertaking illegal activities or having illegal information or fails to produce all information pursuant to an appropriate court or administrative act, on the basis of which criminal offenders can be detected or prosecuted and/or the rights of third parties protected (Article 22, paras. 2 and 3).

Legal entity's responsible officers shall also be punished for the misdemeanour referred to in paragraph 1 of this Article with fines ranging from EUR 100.00 to EUR 1,500. Entrepreneurs shall be punished for the misdemeanour referred to in paragraph 1 of this Article with fines ranging from EUR 300.00 to EUR 4,000.

Where the misdemeanour referred to in paragraph 1 of this Article is committed by a natural person - the information society service provider, he shall be punished with a fine ranging from EUR 50.00 to EUR 1,100.

A prohibition of professional activity for a period of three to six months may be imposed for the misdemeanour referred to in paragraph 1 of this Article, in the case of particularly serious violations or recurrence of violations.

VII. TRANSITIONAL AND FINAL PROVISIONS

Article 25

Articles 5, 6a, 66 and 22a shall apply from the date of accession of Montenegro to the European Union.

Article 26

This Law shall enter into force on the eighth day following that of its publication in the Official Gazette of Montenegro.