

**Act on electronic commerce
(E-Commerce Act)**

(D R A F T)

I approve the following resolution drafted by Parliament:

I. General provisions

Article 1

Subject and scope

1) This Act regulates the legal framework governing certain aspects of electronic commerce and legal relations. It regulates in particular:

- a) the authorisation of information society services;
- b) the obligations incumbent on service providers to provide information;
- c) the conclusion of contracts;
- d) the liability of service providers;
- e) the country of origin principle; and
- f) cooperation with other Signatory States to the Agreement in the European Economic Area (EEAA) in the area of electronic commerce.

2) This Act serves to transpose 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 (Official collection of EEA law: Annex XI - 5h.01).

Article 2

Scope; applicability

1) This Act will not affect the interests of taxation and data protection.

2) The provisions concerning the country of origin principle (Articles 20 to 23) and cooperation with other Signatory States to the EEAA (Article 25) only apply to the movement of information society services within the European Economic Area (EEA).

Article 3

Terms and definitions; descriptions

1) For the purposes of this Act the following terms and definitions apply:

- a) *information society service*: any service normally provided for remuneration, at a distance, by electronic means and at the individual request of the recipient of a service, in particular the sale of goods and services on-line, on-line information, on-line advertising, electronic search engines and facilities allowing for retrieval of data and including services consisting of the transmission of information via an electronic network in providing access to an electronic network or in hosting information provided by the user;
- b) *service provider*: a natural or legal person or other establishment having legal status providing an information society service;
- c) *established service provider*: a service provider which effectively pursues an economic activity using a fixed establishment for an indefinite period. The presence and use of the technical means and technologies required to provide the service do not, in themselves, constitute an establishment of the provider;
- d) *recipient*: a natural or legal person or other establishment having legal status who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible;
- e) *consumer*: a natural person who is acting for purposes which are outside his trade, business or profession;

- f) *commercial communication*: advertising and other forms of communication designed to promote, directly or indirectly, the goods, services or image of a company, organisation or a natural person, with the exception of:
 - 1. information allowing direct access to the activity of the company, organisation or natural person, in particular a domain name or an electronic mail address; and
 - 2. communications relating to the goods, services or image of the company, organisation or natural person compiled in an independent manner, particularly when this is without financial consideration;
- g) *Signatory State*: a Signatory State to the EEAA;
- h) *coordinated field*: the general or specific legislation applicable to information society services and service providers in respect of the taking up and pursuit of the activity of an information society service, in particular the laws and regulations concerning the qualifications and behaviour of the service provider, authorisation or notification as well as the quality and content of information society services – including those provisions applicable to advertising and contracts – and concerning the legal liability of service providers.

2) The personal pronouns and functional descriptions used in this Act refer equally to men and women.

II. Authorisation of information society services

Article 4

Principle excluding prior authorisation

- 1) The taking up and pursuit of the activity of a service provider is not subject to a separate official authorisation, license, approval or concession or any other requirement having equivalent effect.

2) The laws and regulations governing the admissibility of taking up or pursuing a business, commercial or professional activity which does not specifically and exclusively apply to information society services or the providers thereof shall not be affected. The same applies to the laws and regulations governing the duty of notification or the requirement of a license within telecommunications services.

III. Information obligations

Article 5

General information

1) The service provider shall render easily, directly and permanently accessible to the recipients at least the following information:

- a) its name or its company name;
- b) the geographic address at which it is established;
- c) the details, including its electronic mail address, which allow the recipient to contact it rapidly and directly;
- d) if available, its number on the public register;
- e) where the activity is subject to supervision under an official scheme, the relevant supervisory authority;
- f) where a service provider is subject to commercial or professional regulations, the professional association, body or similar institution to which it belongs, the professional title and the Signatory State in which this has been granted as well as a reference to the applicable commercial or professional regulations and the means of access to these;
- g) if available, the VAT number.

2) Where information society services refer to prices these are to be indicated in such a way that they can be easily read and classified by the average observer. It must be made clear whether the

prices include VAT and all other taxes and supplements (full prices) or not. It shall also be indicated whether they are inclusive of delivery costs.

3) Other information obligations shall not be affected.

Article 6

Information on commercial communication

1) The service provider must ensure that in the case of commercial communication which is part of, or constitutes, an information society service:

- a) this is clearly and unambiguously identifiable as such;
- b) the natural or legal person on whose behalf the commercial communication is made is clearly and unambiguously identifiable;
- c) promotional offers, such as discounts, premiums and gifts are clearly and unambiguously identifiable as such and the conditions which are to be met to qualify for them are easily accessible; and
- d) prize competitions and games are clearly and unambiguously identifiable as such and the conditions for participation are easily accessible.

2) Other information obligations relating to commercial communication as well as the laws and regulations governing the admissibility of promotional offers and of prize competitions and games shall not be affected.

Article 7

Unsolicited commercial communication

1) A service provider which lawfully sends commercial communication by electronic mail without the prior consent of the recipient must ensure that the commercial communication is identifiable clearly and unambiguously as such as soon as it is received by the recipient.

2) The government or an official office or department appointed by them shall keep a register in which those persons and companies who have opted out of receiving unsolicited communication by electronic mail can register themselves electronically free of charge. The government, or official office or department, may make arrangements for entries to be made on line and for this register to be kept on line. The service provider referred to in paragraph 1 must respect and regularly consult this register.

3) The laws and regulations governing the admissibility and inadmissibility of transmitting commercial communication by electronic mail shall not be affected.

Article 8

Commercial communication for members of regulated professions

1) Service providers that are subject to the professional rules may use a commercial communication which is part of, or constitutes, an information society service provided by them.

2) Professional rules which restrict commercial communication for members of these professions, in particular to preserve the independence, dignity and honour of the profession, safeguard professional secrecy and ensure fairness towards clients and other members of the profession, shall not be affected.

IV. Conclusion of contracts

Article 9

Information to be provided during the contractual process

1) Prior to the submission of the contract declaration (offer or acceptance of contract) the service provider must clearly, comprehensibly and unambiguously inform the recipient of:

- a) the different technical steps to follow for the contract declaration and to conclude the contract;
- b) whether or not the concluded contract will be filed by the service provider and whether it will be accessible;
- c) the technical means for identifying and correcting input errors prior to the submission of the contract declaration; and
- d) the languages in which the contract may be concluded.

2) The service provider must indicate the voluntary codes of conduct to which it subscribes and information on how these codes can be consulted electronically.

3) The information obligations stipulated in paragraphs 1 and 2 may not be waived to the detriment of consumers. These paragraphs do not apply to contracts concluded exclusively by electronic mail or by an equivalent individual means of communication.

4) The other information obligations of the service provider shall not be affected.

Article 10

Submission of a contract declaration

1) The service provider must make available to the recipient appropriate, effective and accessible technical means allowing him to identify and correct input errors prior to the submission of a contract declaration.

2) The service provider must notify the recipient without undue delay and by electronic means if an electronic contract is accessed.

3) The obligations incumbent on the service provider in accordance with paragraphs 1 and 2 may not be waived to the detriment of consumers. These paragraphs do not apply to contracts concluded exclusively by electronic mail or by an equivalent individual means of communication.

Article 11

Contract terms and general conditions

The service provider must make the contract terms and general conditions available to the recipient in a way that allows him to store and reproduce them. This obligation may not be waived to the detriment of the recipient.

Article 12

Accessing electronic declarations

Electronic contract declarations, other legally relevant electronic declarations and electronic acknowledgements of receipt are deemed to be accessed when the party to whom they are addressed are able to access them under normal circumstances. This regulation may not be waived to the detriment of consumers.

V. Liability of service providers

Article 13

Exemption from liability in the case of conduit

1) A service provider who transmits in a communication network information provided by a recipient or provides access to a communication network is not liable for the information transmitted, on condition that the provider:

- a) does not initiate the transmission;
- b) does not select the receiver of the information transmitted; and
- c) does not select or modify the information transmitted.

2) The transmission of information and the provision of access referred to in paragraph 1 also includes the automatic, intermediate transient storage of the information transmitted in so far as this transient storage takes place for the sole purpose of carrying out the transmission in the communication network and provided that the information is not stored for any period longer than is reasonably necessary for the transmission.

Article 14

Exemption from liability in the case of search engines

1) A service provider who provides recipients with a search engine or other electronic tools to search for foreign information is not liable for the information retrieved, on condition that the provider:

- a) does not initiate the transmission of the information retrieved;
- b) does not select the receiver of the information retrieved; and
- c) does not select or modify the information retrieved.

2) Paragraph 1 shall not apply if the person from whom the retrieved information originates is acting under the authority or control of the service provider.

Article 15

Exemption from liability in the case of intermediate storage (caching)

A service provider who transmits in a communication network information provided by a recipient, is not 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 upon their request, on condition that the provider:

- a) does not modify the information;
- b) complies with the conditions on access to the information;
- c) complies with rules regarding the updating of the information, specified in a manner widely recognised and used by industry;
- d) does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information; and
- e) acts expeditiously to remove or disable access to the information it has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled or that a court or an administrative authority has ordered such removal or disablement.

Article 16

Exemption from liability in the case of the storage of foreign contents (hosting)

1) A service provider who stores information provided by a recipient is not liable for the information stored at the request of a recipient, on condition that the provider:

- a) does not have actual knowledge of the illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or
- b) upon obtaining such knowledge or awareness, acts expeditiously to remove or disable access to the information.

2) Paragraph 1 shall not apply if the recipient is acting under the authority or control of the service provider.

Article 17

Exemption from liability in the case of links

1) A service provider who provides access to foreign information through an electronic cross-reference is not liable for this information, on condition that the provider:

- a) does not have actual knowledge of the illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or
- b) upon obtaining such knowledge or awareness, acts expeditiously to remove the electronic cross-reference.

2) Paragraph 1 shall not apply if the person from whom the information originates is acting under the authority or control of the service provider or if the service provider presents the foreign information as their own.

Article 18

Scope of the obligations incumbent on service providers

1) The service providers referred to in Articles 13 to 17 are not subject to a general obligation to monitor the information which they store, transmit or make accessible nor a general obligation to seek facts or circumstances indicating illegal activity.

2) On the basis of an order from a legally authorised court in Liechtenstein, the service providers referred to in Articles 13 and 16 must provide this court with all the information relating to the recipients of their service, with whom they have concluded agreements on the transmission or storage of information, which may be used to prevent, investigate, detect or prosecute criminal offences.

3) On the basis of an order from an administrative authority, the service providers referred to in Article 16 must provide this authority with the names and addresses of the recipients of their services, with whom they have concluded agreements on the storage of information, in so far as knowledge of this information is an important prerequisite for the fulfilment of the tasks entrusted to this authority.

4) The service providers referred to in Article 16 must provide the name and address of a recipient of their service, with whom they have concluded agreements on the storage of information, at the request of a third party, in so far as this third party has an overwhelming legal interest in establishing the identity of a recipient and certain illegal circumstances and can also substantiate that knowledge of this information is an important prerequisite for prosecution.

5) Other obligations incumbent on service providers as regards informing and cooperating with the authorities or the courts shall not be affected.

Article 19

More extensive legislation

1) Articles 13 to 18 shall not affect legislation, according to which the courts or an authority may entrust the service provider with the omission, removal or prevention of a violation of the law.

2) Paragraph 1 as well as Articles 13 to 18 shall also apply to service providers who provide electronic services free of charge.

VI. Country of origin principle and exemptions

Article 20

Country of origin principle

1) Within the coordinated field (Article 3 letter h) the legal requirements are aimed at a service provider established in a Signatory State according to the law of that State.

2) The free movement of information society services from another Signatory State must not, subject to Articles 21 to 23, be restricted on the basis of domestic laws and regulations which falls within the coordinated field.

Article 21

Exemptions from the country of origin principle

The country of origin principle is not applicable in the following areas:

a) aspects of copyright and related rights, of design law and of the protection of topography;

- b) the emission of electronic money by institutions in respect of which the Signatory States have applied one of the derogations provided for in Article 8(1) of Directive 2000/46/EC (Official collection of EEA law: Annex IX – 15.01);
- c) legislation on the advertisement for investment funds and other undertakings for collective investment in transferable securities in the country of sale;
- d) the laws and regulations contained in Article 30 and Title IV of Directive 92/49/EEC (Official collection of EEA law: Annex IX-7a.01), in its current version, in Title IV of Directive 92/96/EEC (Official collection of EEA law: Annex IX – 12.02), in its current version, in Articles 7 and 8 of Directive 88/357/EEC (Official collection of EEA law: Annex IX – 7.01), in its current version, as well as in Article 4 of Directive 90/619/EEC (Official collection of EEA law: Annex IX – 12.01), in its current version, concerning the obligations of insurance undertakings upon presentation of the conditions for compulsory insurance to the relevant supervisory authority, concerning the right of establishment and the freedom to provide services of insurance undertakings in the European Economic Area and concerning the law which is applicable in the case of non-life and life insurance contracts which cover risks situated in a Signatory State;
- e) the freedom of the parties to choose the law applicable to their contract;
- f) contractual obligations concerning consumer contracts, including the legal information obligations which have a specific influence on the decision to conclude the contract;
- g) the legal validity of contracts creating or transferring rights in property where such contracts are subject to mandatory formal requirements of the law of the Signatory State where the property is situated;
- h) the permissibility of unsolicited advertising and other promotional measures by electronic mail;
- i) the activities of notaries and the activities of members of equivalent professions to the extent that they exercise authority under public law;
- k) the representation of a party and the defence of his interests before the courts;
- l) gambling activities which involve wagering a stake with monetary value, including lotteries and betting transactions.

Article 22

Deviations from the country of origin principle

1) As part of their legal powers the courts or an administrative authority may take measures to derogate from the country of origin principle which restrict the free movement of information society services from another Signatory State. However, these measures must be necessary for the protection of one of the legal objectives referred to in paragraph 2. They may only be directed at a service provider who prejudices one of these legal objectives or threatens to seriously and gravely prejudice one of these objectives. These measures must also be proportionate to the objectives pursued.

2) The free movement of information society services from another Signatory State may only be restricted for the following reasons:

- a) the protection of public order, in particular the prevention, investigation, detection or prosecution of criminal offences, including the protection of minors and the fight against any incitement to hatred on grounds of race, sex, religion or nationality;
- b) the protection of human dignity;
- c) the protection of public health;
- d) the protection of public security, including the safeguarding of national security; and
- e) the protection of consumers, including investors.

Article 23

Notification obligation

1) The administrative authority must notify the EFTA Surveillance Authority and the relevant body in the other State of its intention to take measures which restrict the free movement of information society services from another Statutory State and must request that they take suitable measures against the service provider. The administrative authority may only carry out its intended

measures if the relevant body in the other Signatory State does not respond to this request within a suitable period or if the measures taken by this body are insufficient.

2) Where there is a threat of danger the administrative authority may also enact its intended measures without notifying the EFTA Surveillance Authority and calling on the relevant body in the other Signatory State. In this case the authority must immediately notify the Commission and the relevant body of the measures it has taken, stating that these were implemented due to the threat of danger.

3) Paragraphs 1 and 2 shall not apply to judicial proceedings.

VII. Transparency and contact with other Signatory States

Article 24

Transparency

1) The government or an official office appointed by them must make the EFTA Surveillance Authority aware of any significant legal or administrative decisions in the field of information society services of which they become aware.

2) The government or an official office appointed by them must publish information on the Internet concerning:

- a) the contractual rights and obligations of the recipient as well as concerning the complaint and redress mechanisms available in the event of disputes, including practical aspects involved in the use of such mechanisms; and
- b) the details of authorities, bodies under public law and other bodies from which recipients or service providers may obtain further information or practical assistance.

Article 25

Contact points

1) The government or an official office appointed by them shall cooperate in the form of a contact point with the relevant bodies in other Signatory States and with the Standing Committee. They shall provide the information requested by other Signatory States and the Standing Committee and pass on any requests for legal or administrative assistance or for information, which do not fall within their sphere of activity, to the relevant courts or administrative authorities.

2) The authority shall publish any details they have regarding contact points in other Signatory States on the Internet.

VIII. Penalties

Article 26

Violations

1) A service provider may be punished by a fine of up to CHF 10 000 from the government for violating this Act if he:

- a) infringes the general information obligations in accordance with Article 5 paragraph 1;
- b) infringes the information obligations relating to commercial communication in accordance with Article 6;
- c) infringes the information obligations relating to the conclusion of contracts in accordance with Article 9 paragraph 1 or contrary to Article 9 paragraph 2 does not indicate how the voluntary code of conduct to which it subscribes can be consulted electronically;
- d) contrary to Article 10 paragraph 1 does not make available the technical means allowing the identification and correction of input errors; or
- e) contrary to Article 11 does not make available to the recipient the contract terms and general conditions in a way that allows him to store and reproduce them.

2) A violation in accordance with paragraph 1 is not committed if the act does not constitute the elements of a punishable act falling under the jurisdiction of the courts or is not at threat of a more severe penalty under other administrative penal provisions.

Article 27

Active repentance

1) The government may draw the attention of a service provider to the fact that they are in violation of the obligations of this Act and instruct them to reestablish the legality of the situation within an appropriate period determined by them. In doing so they shall refer to the legal consequences associated with such a request.

2) A service provider shall not be punished by the government for a violation in accordance with Article 26 paragraph 1 if they reestablish the legality of the situation within the stipulated period.

IX. Concluding provision

Article 28

Entry into force

This Act shall enter into force on the day of promulgation.

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