

Act No. 227 of 22 April 2002 on certain legal aspects of information society services, in particular electronic commerce

WE MARGRETHE THE SECOND, By the Grace of God Queen of Denmark, hereby proclaim:
The Folketing has passed and We have confirmed by Royal Consent the following Act:

Scope of the Act

1. This Act applies to services in the information society.
- (2) This Act does not apply under circumstances relating to:
 - 1) Taxation.
 - 2) Personal data protection.
 - 3) The rules of the Competition Act governing competition-restricting agreements, resolutions and coordinated practice, abuse of dominant position and merger control.
 - 4) The activities of notaries or similar activities linked to the exercise of official authority.
 - 5) The representation of clients in court.
 - 6) Games that involve wagering a stake with monetary value, including lotteries and betting transactions.

Definitions

2. The following definitions apply in this Act:
 - 1) Services in the information society (information society services): any service that has a commercial purpose and that is delivered online (electronically over a certain distance) at the individual request of a recipient of the service.
 - 2) Service provider: any natural or legal person providing an information society service.
 - 3) Established service provider: a service provider who pursues an economic activity using a fixed establishment for an indefinite period.
 - 4) Recipient of the service: any natural or legal person who receives and uses an information society service.
 - 5) Consumer: any natural person who is acting for purposes which are outside his or her trade, business or profession.
 - 6) Commercial communication: any form of communication designed to promote, directly or indirectly, the goods, services or image of a company, organisation or person pursuing a commercial, industrial or craft activity or exercising a regulated profession.
 - 7) Regulated profession: any profession within the meaning of either Article 1 (d) of Council Directive 89/48/EEC on the introduction of a general system for the mutual recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration, or of Article 1 (f) of Council Directive 92/51/EEC on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC.
 - 8) Coordinated field: requirements laid down in European Union Member States' legal systems applicable to information society services, or to providers of information society services when taking up or pursuing such provision. The coordinated field does not apply to requirements applicable to goods as such, or to the delivery of goods.
 - 9) Communication network: A system used for the transmission of information between connected terminals.

Domestic control

3. An information society service supplied by a service provider established in Denmark shall be operated in accordance with Danish law within the coordinated area (cf. Section 2 point 8). This applies irrespective of whether the service is directed only towards another country within the European Union/European Economic Area.

Mutual recognition

4. A service provider who is established in another country within the European Union/European Economic Area and who supplies an information society service is exempt from compliance with Danish regulations within the coordinated area (cf. Section 2 point 8), even if the service is directed towards Denmark (but cf. Sections 5 and 6).

Derogations

5. Sections 3 and 4 contain no amendment to the current Danish regulations in the following areas:

- 1) Copyright and related rights, rights referred to in Council Directive 87/54/EEC on the legal protection of topographies of semiconductor products and the Directive 96/9/EC of the European Parliament and of the Council on the legal protection of databases, and industrial property rights.
- 2) The emission of electronic money by institutions in respect of which Member States have applied one of the derogations provided for in Article 8 (1) of the Directive 2000/46/EC of the European Parliament and of the Council on the taking up, pursuit of and prudential supervision of the business of electronic money institutions.
- 3) The marketing of shares in investment associations under Article 44 (2) of Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities.
- 4) Certain insurance policies in accordance with Article 30 and Section IV of Directive 92/49/EEC (the third non-life insurance Directive), Section IV of Directive 92/96/EEC (the third life insurance Directive), Articles 7 and 8 of Directive 88/357/EEC (the second non-life insurance Directive) and Article 4 of Directive 90/619/EEC (the second life insurance Directive).
- 5) The extent to which unsolicited marketing via electronic mail is permitted.

Intervention procedure

6. Notwithstanding Section 4, the authorities may take measures to restrict provision of an information society service in respect of a service provider who is established in another country within the European Union/European Economic Area, if such measures

- 1) are necessary in consideration of
 - a) public policy, in particular the prevention, investigation, detection and 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, and violations of human dignity concerning individual persons,
 - b) the protection of public health,
 - c) public security and
 - d) the consumers (including investors),
- 2) are taken against a given information society service which prejudices the objectives referred to in point 1, and
- 3) are proportionate to those objectives.

(2) Before the measures referred to in subsection 1 are taken, the authorities in the country of

establishment shall be asked to intervene. If the authorities in the country of establishment do not intervene or if their intervention is not adequate, the Danish authority shall inform the Commission and the authorities in the country of establishment about the measures before they are taken.

(3) In cases of urgency, the authorities may derogate from the conditions stipulated in subsection 2. Where this is the case, the Commission and the authorities in the country of establishment shall be notified in the shortest possible time of the measures and the reason for their urgency.

(4) The procedures referred to in subsections 2 and 3 do not apply to measures taken as part of the investigation and adjudication of criminal cases.

General information to be provided

7. A service provider shall disclose

- 1) the name of the service provider,
- 2) the geographic address at which the service provider is established,
- 3) an electronic mail address (and if applicable postal address) and other details of the service provider which allow him to be contacted and communicated with,
- 4) the CBR number, if the service provider is registered in the Central Business Register,
- 5) affiliation, if any, to authorisation schemes, including the relevant supervisory authority.

(2) A service provider who exercises a regulated profession shall also give

- 1) details of any professional body or similar institution with which the service provider is registered,
- 2) details of the professional title and the Member State in which it was granted, and
- 3) a reference to the professional rules that apply to the regulated profession, and the means to access them.

(3) The recipient of the service and the authorities shall have easily available and permanent access to the information referred to in subsections 1 and 2.

Price information

8. Where information society services refer to prices, these are to be indicated clearly and unambiguously, and it must be indicated whether they are inclusive of taxes and delivery costs.

Identification of commercial communication

9. All commercial communication that is part of or constitutes an information society service shall be framed and presented so that it is clearly identifiable as such. The party on whose behalf the commercial communication is made shall be clearly identifiable.

(2) Where promotional offers such as discounts, premiums and gifts are permitted, the conditions for participation in these arrangements shall be easily accessible and presented clearly and unambiguously. The conditions in paragraph 1 apply correspondingly to promotional competitions and permitted games.

Information to be provided

10. Before an order is placed, a service provider shall clearly, comprehensibly and unambiguously give the recipient of the service information about

- 1) the different technical steps to follow to conclude the contract,
- 2) whether or not the concluded contract will be filed by the service provider and whether it will be

accessible,

3) the technical means for identifying and correcting input errors and

4) the languages offered for the conclusion of the contract.

(2) A service provider shall indicate any relevant codes of conduct to which he subscribes and how those codes can be consulted electronically.

Technical help functions etc.

11. Before an order is placed, a 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.

(2) Contract terms and general conditions provided to the recipient must be made available in a way that allows him to store and reproduce them.

Order confirmation and reception

12. A service provider shall acknowledge the receipt of the recipient's order without undue delay.

(2) The electronic order and the electronic acknowledgement of receipt (cf. subsection 1) are deemed to be received when the parties to whom they are addressed are able to access them.

Exemptions relating to electronic mail and inter-business agreements

13. The provisions of Section 10, Section 11 subsection 1 and Section 12 subsection 1 do not apply to contracts that parties enter into exclusively by exchanging electronic mail or similar individual communication.

(2) Parties who are not consumers may derogate from the provisions of Section 10, Section 11 subsection 1 and Section 12 by agreement.

Mere conduit

14. A service provider who transmits information on a communication network supplied by a recipient of the service is not liable for the information transmitted, on condition that the provider

1) does not initiate the transmission,

2) does not select the receiver of the transmission and

3) does not select or modify the information contained in the transmission.

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

(3) The provisions of subsections 1 and 2 also apply to a service provider who provides access to a communication network.

Caching

15. A service provider who transmits information provided by a recipient of the service on a communication network is not liable for the automatic, intermediate and temporary storage of such information or for the content of such 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 the service provider

- 1) does not modify the information,
- 2) complies with conditions on access to the information,
- 3) complies with rules regarding the updating of the information, specified in a manner widely recognised and used by industry,
- 4) 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
- 5) acts expeditiously to remove or to disable access to the information he has stored upon obtaining actual knowledge of the fact that the information 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.

Hosting

16. A service provider is not liable for storage of information or for the content of the information stored, where such storage takes place at the request of a recipient of the service who has supplied the information, on condition that the service provider

- 1) does not have actual knowledge of 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
 - 2) the provider, upon obtaining such knowledge or awareness (cf. point 1), acts expeditiously to remove or to disable access to the information.
- (2) Subsection 1 shall not apply when the recipient of the service is acting under the authority or the control of the provider.

Contact points

17. Following negotiation with the ministers affected, the Minister of Economic and Business Affairs will appoint the authorities who will act as contact points for cooperation under this Act. The Minister of Economic and Business Affairs will provide the Commission and the Member States of the European Union with additional information about the authorities appointed.

(2) Following negotiation with the ministers affected, the Minister of Economic and Business Affairs will appoint the bodies who will act as contact points for service providers and recipients of the service. The contact point will provide general advice and complaint guidelines concerning contractual circumstances and will refer to relevant bodies for additional information and practical assistance. There shall be electronic access to the contact point.

(3) The Minister of Economic and Business Affairs may, after negotiation with the ministers affected, lay down more detailed rules governing the contact points referred to in subsections 1 and 2.

Entry into force

18. This Act shall enter into force the day after publication in the official journal Lovtidende.

The Faroe Islands and Greenland

19. This Act does not apply to the Faroe Islands and Greenland, but may by Royal decree be rendered effective in these provinces, subject to the variations dictated by special Faroese and

Greenlandic conditions.

Given at Amalienborg on 22 April 2002

Under Our Royal Hand and Seal

Margrethe R.

/Bendt Bendtsen

Official notes

1 This Act implements 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 (OJ 2000 L 178 of 17.07.2000, pp. 1-16).