

## **Act No. 35 of May 23, 2003, Relating to Certain Aspects of Electronic Commerce and Other Information Society Services (Electronic Commerce Act)**

### **Section 1. Purpose and scope of the Act**

This Act applies to electronic commerce and other information society services and regulation and control of such services by the public authorities. The purpose of the Act is to ensure free movement of information society services within the European Economic Area (EEA).

An information society service is

- a) any service which is normally performed for remuneration and which is provided electronically at a distance and at the individual request of a recipient of a service and
- b) any service that consists of providing access to or transmitting information via an electronic communication network or of hosting information provided by the recipient of a service.

Voice telephony, telefax and telex services are not covered by the Act.

The King may issue regulations concerning what shall be regarded as an information society service.

The King may issue regulations prescribing that the Act shall wholly or partly apply to Svalbard and Jan Mayen.

### **Section 2. Exceptions from the scope of the Act**

The Act shall not apply to:

- a) taxation,
- b) processing of personal data pursuant to the Personal Data Act and regulations issued pursuant thereto, the Telecommunications Act and regulations issued pursuant thereto and the Act of 23 June 2000 No. 54 relating to computerized reservation systems for passenger transport, etc.,
- c) questions concerning agreements or practice regulated by the Competition Act and by articles 53 and 54 of the EEA Agreement,
- d) activities as notaries public pursuant to the Act of 26 April 2002 No. 12 relating to notaries public,
- e) representation of a client and safeguarding of such client's interests in courts of law,
- f) gaming activities involving financial stakes in games of chance, including lotteries and betting, cf. the Act of 1 July 1927 No. 3 relating to betting by means of a totalizator, the Act of 28 August 1992 No. 103 relating to Money Games, etc. and the Act of 24 March 1995 No. 11 relating to lotteries, etc.

### **Section 3. Definitions**

For the purposes of this Act:

- a) "service provider" means a natural or legal person who provides information society services,
- b) "recipient of a service" means a natural or legal person who uses an information society service,
- c) "place of establishment" means a fixed establishment where the commercial activities with which the information society service concerned is associated, are actually carried out,
- d) "the coordinated regulatory area" means national rules prescribing requirements concerning information society services and service providers as regards the establishment and operation of information society services,

- e) “consumer” means a natural person who does not primarily act as part of commercial activity.

**Section 4.** *Information society services from Norway*

A service provider with a place of establishment in Norway shall within the coordinated regulatory area comply with Norwegian law regardless of whether the service is wholly or partly directed towards recipients of the service in another state within the EEA.

**Section 5.** *Information society services from another state within the EEA*

A service provider with a place of establishment in another state within the EEA has, notwithstanding Norwegian rules within the coordinated regulatory area, the right to provide information society services to recipients of the service in Norway.

The first paragraph shall notwithstanding not preclude that a court of law or other authority, when so provided by other legislation, may derogate from the freedom to provide a given information society service in so far as the measure is necessary for protection of:

- a) public order, particularly prevention, investigation and prosecution of criminal offences, protection of minors, and protection against violations of human dignity concerning individual persons and against incitement to hatred on grounds of race, sex, religion or nationality,
- b) public health,
- c) public safety, including protection of national security and defence, or
- d) consumers, including investors in so far as they are consumers.

Before laying down prohibitions as referred to in the second paragraph,

- a) the state where the service provider has his place of establishment must have been called upon to implement measures without this proving adequate to protect the purposes referred to in the second paragraph, and
- b) the EFTA Surveillance Authority (ESA) and the state concerned must have been informed that such prohibitions will be laid down.

The provisions of the third paragraph shall not apply to cases brought before courts of law or to measures taken in the investigation of criminal offences. They may also be departed from if delay entails any risk but, in such case, the ESA and the state concerned must, as soon as possible, be notified of this and of the prohibition laid down.

The King may issue regulations concerning who shall be notified pursuant to the third and fourth paragraphs and concerning the content of the notification.

**Section 6.** *Exceptions to sections 4 and 5*

The provisions of sections 4 and 5 shall not apply to:

- a) agreements concerning choice of law for a contract,
- b) choice of law in insurance, cf. sections 4 to 10 of the Act of 27 September 1992 No. 111 relating to choice of law in insurance,
- c) contractual terms in consumer contracts,
- d) mandatory requirements regarding agreements that establish or transfer rights to real property,
- e) intellectual property rights,
- f) electronic transmission of unsolicited advertising,
- g) marketing of shares in securities funds, cf. the Act of 12 June 1981 No. 52 relating to securities funds
- h) the emission of electronic money by an institution subject to an exception laid down in section 1-2 of the Act relating to electronic money enterprises, and

i) insurance activities excepted pursuant to regulations laid down by the Ministry.

**Section 7. *Prohibition of requirements regarding prior consent***

A service provider may provide information society services without any prior consent or similar licence solely relating to the provision of information society services.

Requirements regarding licensing pursuant to chapter 2 of the Telecommunications Act shall apply notwithstanding the first paragraph.

**Section 8. *The service provider's duty to provide information concerning his activities***

When pursuing its activities, a service provider shall always provide information of its name, address, electronic postal address and other information which allows it to be contacted directly. In addition, the service provider shall provide information:

- a) concerning the register of business enterprises where the service provider is registered, as well as the service provider's registration number and indicating whether the undertaking is subject to VAT, and
- b) concerning any approvals that are required in order to pursue the activity and the name and address of the relevant approval authority.

In the case of professional activities that directly or indirectly are subject pursuant to statutes or regulations to a condition that the person concerned hold a diploma or certificate of training, the service provider shall also provide information concerning:

- a) his professional title and the member state in which it was awarded,
- b) the rules for professional conduct that apply to the service provider, and
- c) where the recipient of a service can obtain the rules referred to in (b).

The information pursuant to the first and second paragraphs shall be made simply and directly accessible to recipients of a service and to public authorities.

The provision shall not apply in relation to service providers who solely provide services consisting of transfer of information via an electronic communication network.

**Section 9. *The service provider's duty to provide information in connection with electronic marketing***

In connection with electronic marketing, the person on whose behalf the marketing is carried out shall be clearly stated. If unsolicited marketing is sent by means of electronic post, it shall be stated that the messages contain marketing when the messages are received.

If prices are stated in connection with an information society service, information shall be provided concerning taxes and delivery charges. In relation to consumers, the total costs to be paid by the consumer shall be stated including all taxes and delivery charges unless information concerning the price of the service is regulated by other legislation.

Advertising offers, such as discounts, prizes and gifts shall be easily identifiable. Information concerning conditions for taking advantage of such offers shall be clear and easily accessible.

Promotional competitions or games shall be easily identifiable. Information concerning conditions for participation in such competitions or games shall be clear and easily accessible.

The provisions of the Marketing Act apply in addition to the provisions of this section.

**Section 10. *Obligation to respect opt-out registers, etc.***

A service provider who has his place of establishment in Norway, and who directs unsolicited marketing representations by electronic mail to recipients in other states within the EEA shall consult and respect the registers in which natural persons not wishing to receive such e-mail advertising can register themselves.

### **Section 11.** *Duty to provide information prior to electronic orders*

Before electronic orders are made, the service provider shall provide the recipient of a service with clear, comprehensible and unambiguous information concerning:

- a) relevant rules of conduct followed by the service provider and whether and where these can be obtained electronically,
- b) the various technical stages associated with entry into agreements,
- c) whether an agreement entered into will be filed by the service provider and whether it will be accessible,
- d) the technical means of finding and correcting typing errors before orders are made,
- e) the languages in which the agreement may be entered into.

Agreement terms, standard terms and general terms must be made available to the recipient of a service in such a way as to enable them to be stored and displayed.

The service provider shall facilitate electronic entry into agreements in such a way that typing errors can easily be discovered and corrected before an agreement is entered into.

The first and third paragraphs shall not apply to agreements which are solely entered into via electronic mail or equivalent individual communication, and which may be departed from in agreements concerning clients other than individual consumers.

### **Section 12.** *Receipt and confirmation of orders*

If the recipient of a service makes an order electronically, the service provider shall always and without undue delay send an electronic confirmation that the order has been received.

An order or confirmation made electronically is regarded as received when the addressee has access to it.

The first paragraph shall not apply to agreements solely entered into via electronic mail or equivalent individual communication.

The first and second paragraph may be departed from in agreements concerning clients other than individual consumers.

### **Section 13.** *Responsibility for information and guidance*

The Ministry shall by means of regulations appoint contact points which shall be accessible by electronic means and from which recipients of a service and service providers may obtain:

- a) general information on their contractual rights and obligations, as well as on the complaint and redress mechanisms available in the event of disputes and on procedures for the use of such mechanisms,
- b) the details of authorities, associations or organisations from which they may obtain further information or practical assistance.

The Ministry may issue regulations concerning activities in the contact points appointed pursuant to the first paragraph.

### **Section 14.** *Cooperation with other EEA-states*

The Ministry is responsible for cooperation with other EEA-states.

### **Section 15.** *Commencement*

This Act enters into force on the date decided by the King.