

Pursuant to Article 75, paragraphs 1 and 2 of the Constitution of the Republic of Macedonia, the President of the Republic of Macedonia and the President of the Assembly of the Republic of Macedonia issue this

**DECREE
FOR PROMULGATION OF
THE LAW ON ELECTRONIC COMMERCE**

The Law on electronic commerce, adopted by the Assembly of the Republic of Macedonia on its session held on 26 October 2007, is hereby promulgated.

No. 07-4542/1
26 October 2007
Skopje

President
of the Republic of Macedonia
Branko Crvenkovski, p. s.

President of the
Assembly of the Republic of Macedonia,
Ljubisa Georgievski, p. s.

LAW ON ELECTRONIC COMMERCE

I GENERAL PROVISIONS

**Article 1
Subject**

(1) This Law shall regulate the information society services related to electronic commerce, the responsibilities of the information society service providers, the commercial communication and the rules related to conclusion of contracts in an electronic format.

**Article 2
Scope of Application**

(1) The provision of these Law shall not apply to:

- taxation ,
- personal data protection,
- activity of public notaries or equivalent professions to the extent that they involved a direct and specific connection between the user and an appropriate competent organ of the state administration,
- representation of consumer and defence of their interests before the court, and
- games of chance with cash investments, including lotteries and betting transactions in compliance with the provisions regulating this area.

Article 3 Definitions

(1) The terms used herein shall have the following meaning:

- 1) “information society services” shall be services normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services. “At a distance” means that the service is provided without the parties being simultaneously present. “By electronic means” shall mean that the service is sent initially/at the original point and received at the final destination through the electronic means of electronic equipment for data processing (including digital compression) and storage of data and entirely transmitted, conveyed and received by wire, radio-frequencies, by optical means or by other electromagnetic means. “At the individual request of the recipient of services” shall mean that the services are provided through the transmission of data at individual request. Information society services shall comprise particularly the sale of products and services, services of providing access to information or announcements through Internet and access to services of a public communication network, data transfer or keeping recipients’ data on the public communication network
- 2) “service provider” shall mean any natural or legal entity providing information society services by means of establishing a trade company for an indefinite period of time in the Republic of Macedonia; the presence and use, however, of technical equipment and technologies required to provide the information society services in themselves shall not constitute provision of such services,
- 3) “recipient of the services” shall be any natural or legal entity who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible,
- 4) “consumer” shall be any natural entity using information society services, and is acting for purposes which are outside its commercial activity or profession,
- 5) “regulated professions” shall be those professions or professional activities the conditions for pursuit of which are stipulated in a law,
- 6) “electronic signature” shall be a series of data in an electronic form, contained in or logically connected to other data in electronic form and aimed at identification of the authenticity of the data and the identity of the signatory,

- 7) “commercial communication” shall be a form of communication design for the purpose to promote, directly or indirectly, the goods, services or image of a company or a person pursuing a commercial or craft activity. The following do not in themselves constitute commercial communication:
- Communicating information allowing direct access to the activity of the natural or legal entity, in particular a domain name, address and electronic-mail address,
 - Communications related to the goods, services or the image of the natural or legal entity carried out in ways other than electronic one, particularly when this is without financial compensation; and
- 8) „contracts in an electronic format“ shall represent contracts that the legal or natural entities completely or partially conclude, send, receive, terminate, cancel, agree to and present by electronic means, using electronic, optical and similar means, including but not limited to transmission over the Internet.

Article 4

Provision of information society services

- (1) The provision of information society services shall be free of charge.
- (2) Providers of information society services in the Republic of Macedonia shall act and render services in compliance with the laws and other regulations in the Republic of Macedonia.

Article 5

Exclusions from Application

- (1) The provision of paragraph 2 of Article 4 shall not apply to providers of information society services with their head offices in a European Union Member State, even in cases when the service is aimed for the citizens of the Republic of Macedonia.
- (2) The provisions of paragraph 1 of Article 4 and paragraph 1 of this Article shall not apply in the following areas:
 - Copyrights and industrial property rights,
 - Electronic money emission,
 - Activities of insurance companies,
 - Freedom of parties to choose the law of the state that shall apply for their contract,
 - Responsibilities resulting from and related to consumer contracts,
 - Validity of the contracts creating or transferring rights to real estate, and
 - Permissibility of not required commercial communication via electronic mail.

Article 6
Principle excluding prior authorization

(1) No special authorization, approval or concession shall be required for the provision of information society services.

II COMMUNICATING INFORMATION AND COMMERCIAL COMMUNICATION

Article 7
Information Need to be provided

(1) Information society services providers shall make at least the following information easily, directly and permanently available for the recipients of services and the competent bodies of the state administration of the Republic of Macedonia:

- Name, i.e. firm of the service provider,
- Head office of the legal entity providing the service or, in case of a natural entity, address,
- Data on the service provider on the basis of which the recipient of services may directly and efficiently get in contact with the stated, including an electronic address,
- Decision of entry of the information society services provider in the Central Registry of the Republic of Macedonia,
- Data from a competent organ, in case the service provider is subject to licensing or other type of approvals, and
- Tax number, in case the service provider is a VAT payer.

(2) In addition to paragraph 1 of this Article, the information society service provider carrying out a regulated profession shall be obliged to make the following information accessible:

- Data about the institution with which the service provider is registered,
- The professional title and the country in which this title is obtained, and
- Reference to the professional rules in the country in which the service provider carries out its activity and ways to access those rules.

(3) In case the information society services provider indicate the prices of products and services, these should be indicated clearly and unambiguously and it should in particular be indicated whether they include the costs of delivery, taxes and manipulative expenses that affect the prices stated.

Article 8
Commercial Communication

(1) The service provider shall ensure that the data in the commercial communication, which constitute a part of the information society services or the service itself, shall be in compliance with at least the following conditions:

- The commercial communication is easily identifiable as such at the moment the user receives it,
- The natural or legal entity on whose behalf the commercial communication is made are identifiable, and
- Any promotional offer in the commercial communication (including discount and gifts) may be clearly identifiable as such and the conditions which are to be met to qualify an offer in the commercial communication are easily accessible and clearly and unambiguously presented.

Article 9
Unsolicited Commercial Communication

(1) The use of electronic mail aimed at delivering unsolicited commercial communication shall be allowed only upon the previous consent of the person to whom this type of communication is sent, in accordance with the Law on Electronic Communications.

III CONTRACTS CONCLUDED BY ELECTRONIC MEANS

Article 10
Form and Validity of Contracts in Electronic Form

- (1) Contracts shall be concluded by electronic means, i.e., in an electronic form.
- (2) The offer and acceptance of the stated shall be given by electronic means, namely in an electronic form.
- (3) Validity of contracts concluded by electronic means shall not be adjudicated on the grounds of being done via an electronic message, i.e. in an electronic form.
- (4) In case the signature of the person is required for the validity of and conclusion of the contract, it shall be deemed that this requirement is met by an electronic message signed with an electronic signature in compliance with the regulations on electronic signatures.
- (5) The provisions in paragraphs 1, 2, 3 and 4 of this Article shall not apply to the following:

- contracts regulated by the regulations on family and inheritance,
- contracts that create or transfer rights in real estate, except for rental rights,
- contracts requiring by law the involvement of courts, notaries and similar professions, and

- contracts of guarantees granted and on collateral securities furnished by individuals acting for purposes outside their trade, business or professional engagement.

Article 11 **Subsidiary Application of the Regulations**

(1) Unless otherwise provided by this Law, the contractual and legal relations resulting from or related to contracts concluded by electronic means or in an electronic form shall be subject to the Law on Obligations.

Article 12 **Information to be Provided for Conclusion of a Contract**

(1) Prior to contract conclusion, the information society services provider shall be obliged to provide the following information to the recipient of services in a clear, comprehensive and unambiguous way:

- the different technical procedures to be followed to conclude the contract,
- contents of the contract,
- general conditions of operation, if those constitute an integral part of the contract,
- whether the contract concluded will be archived by the service provider and whether it will be available,
- the technical means for identifying and correcting of input errors prior to the placing of the order, and
- the languages offered for the conclusion of the contract.

(2) The service provider shall indicate all relevant codes of good practice it has acceded to and the information as to how those codes may be used by electronic means.

(3) The provisions contained in the contracts in electronic form concluded by the information society services providers shall be made available by them for the recipients of the services in a way that allows to store and reproduce them.

(4) The contractual parties who are not consumers in their mutually agreed relations may agree to the provisions of paragraph 1 of this Article.

(5) The provisions in paragraph 1 and 2 of this Article shall not apply to contracts concluded via electronic mail or any similar form of personal communications.

Article 13 **Order and Order Confirmation**

(1) Whenever placing an order by electronic means, the services recipient shall require from the service provider a confirmation of the order in a special electronic message, without delay and by electronic means.

(2) The service provider shall makes available to the recipient of service appropriate, effective and accessible technical means allowing the latter to identify and correct input errors, prior to the placing the order, except in cases when the parties that are not consumers have agreed otherwise.

(3) The order and the confirmation thereof shall be deemed received when they become accessible for the addressees.

(4) The provisions in paragraph 1 and 2 of this Article shall not apply to contracts concluded exclusively by exchange of electronic mail or any other similar form of personal communication.

Article 14

Contract Conclusion

(1) Contracts in an electronic form shall be deemed concluded at the point in time when the offering party receives the electronic message containing a statement of the recipient in which the latter accepts the contract contents.

(2) The offer and its acceptance shall be deemed received when they become accessible for the addressees.

IV RESPONSIBILITY OF THE RECIPIENT AND PROVIDER OF INFORMATION SOCIETY SERVICES

Article 15

Common Provisions

(1) When an information society services are provided that consists of the transmission in a communication network of information provided by a recipient of service or the provision of access to communication network, the service provider shall not be liable for the information transmitted, on condition that the provider:

- does not initiate the transmission,
- does not select the receiver of the transmission, and
- does not select or modify the information contained in the transmission.

(2) The acts of transmission and of provision of access referred to in the provision of paragraph 1 of this Article include automatic, intermediate and transient storage of the information transmitted, in so far as this takes place for the sole purpose of executing the transmission in the communication network and provided that the information is not stored longer than is required for its transfer.

Article 16

Automatic, Intermediate and Temporary Storage

(1) The service provider, when providing information society services consisting of transmission of information provided by the recipient of service via communication network, shall not be liable for the automatic, intermediate and temporary storage of the information performed for the sole purpose of making more efficient the information's onward transmission to other recipients of the services upon their request of the latter, on condition that:

- the provider does not modify the information,
- the provider does meet the requirements for access to the information,
- the provider complies with the rules related to updating of the information,
- the provider does not interfere the lawful use of the technology used for the purpose of obtaining data for the information use, and
- the provider acts expeditiously to remove or to disable the access of the information stored upon obtaining actual knowledge of the fact that the information at initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or another competent authority has ordered such removal or disablement.

Article 17

Storage

(1) Where an information society service is provided that consists of the data storage provided by a recipient of services, the services' providers shall not be liable for the content of the data stored at the request of the recipient of the services, on condition that:

- the provider does not have actual knowledge of illegal activity or data,
- the provider is not aware of the facts or circumstances from which the illegal activity or data is apparent, or
- the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable the access to such data.

(2) The provision in paragraph 1 of this Article shall not apply in cases when the recipient of services acts under the authority of the services provider or when the provider and recipient of services are related companies.

Article 18

Links

The service provider, who allows access to other data by electronic referring, shall not be liable for such information if:

- the provider does not have actual knowledge or awareness of the illegal activities of the recipient of services or of the data content in such information, and
- the provider, upon obtaining knowledge that such information include illegal activities or data, acts expeditiously to remove or disable the access of the latter .

Article 19

Protection of the Law

(1) Notwithstanding the provisions of Articles 14, 15, 16 and 17 of this Law, the courts and other competent authorities and institutions in the Republic of Macedonia, in compliance with the national laws and upon request of the authorized persons, shall impose an obligation on the information society services providers and the recipients of their services to eliminate and prevent any violations of the existing regulation and – pursuant to the latter – to undertake other measures as well, in accordance with the law.

Article 20

Liabilities of Information Society Service Providers

(1) Where information society services are provided, the provider shall not be obliged to check the data stored, transmitted or made accessible, namely to examine the circumstances indicating the illegal activities of the recipient of such services.

(2) Information society services provider shall inform the competent authority of the state administration, if identify that:

- there is grounded suspicion that the recipient of services undertakes illegal activities when using its services,
- there is grounded suspicion that the recipient of such services provides illicit data.

(3) The information society services provider shall be obliged expeditiously to submit the information to the competent bodies of the state administration at their request, allowing the identification of the recipient of their services with whom they have concluded contracts for storage.

V SUPERVISION AND INSPECTION

Article 21

Supervision and Inspection

(1) The Ministry of Economy, the Ministry of Transport and Communication, and the Agency for Electronic Communications – each within their competencies as defined in the Law - shall conduct supervision of the implementation of this law.

(2) The State Market Inspectorate and the Agency for Electronic Communication shall conduct the inspection supervision of the implementation of this law, acting through their competent inspectors.

(3) The information society services providers shall allow the inspectors access to the electronic equipment and devices for the purpose of conducting the inspection and shall immediately submit the data required and documentation related to the subject of inspection.

VI PENALTY PROVISIONS AND OUT-OF-COURT DISPUTES SETTLEMENT - ARBITRATION

Article 22

Misdemeanour Provisions

(1) A fine of 5,000 to 8,000 Euros in a denar counter value valid shall be imposed as on the date of payment on the legal entity providing information society services, if :

- 1) fails to provide the information of Article 7 of this Law,
- 2) fails to provide the compliance of the data with the conditions stated in Article 8 of this Law,
- 3) prior to entering into an contract, fails to provide for the recipient of services the information of paragraph 1 of Article 12 of this Law,
- 4) fails to ensure access to the provisions contained in the contract for electronic form in a way that it will allow for the storage and reproduction of the stated as defined in paragraph 3 of Article 12 of this Law,
- 5) fails to perform the obligations as defined in paragraphs 2 and 3 of Article 20 of this Law, and
- 6) fails to allow access to the electronic equipment and devices and to immediately submit the data and documentation required for the conduct of the inspection in accordance with paragraph 5 of Article 21 of this law.

(2) For the violations of paragraph 1 of this Article, a fine in the amount of 1,000 to 3,000 Euros in a denar counter value as on the date of payment shall be imposed on the responsible person in the legal entity providing information society services.

(3) For the violations of paragraph 1 of this Article, a fine in the amount of 1,000 to 2,000 Euros in a denar counter value as on the date of payment shall be imposed on the natural entity providing information society services.

(4) In addition to the fine, the competent court shall also impose on the legal entity providing information society services the sanction of temporary ban of the activity provision of information society services for a period of one to five years, and the responsible person in the legal entity providing information society services shall also be

sanctioned by the competent court by a ban of carrying out the activity for a period of one to five years.

Article 23

Out-of-court Disputes Settlement – Arbitration

(1) The provider of information society services and the recipient of those services may agree upon arbitration for the purpose of disputes settlement.

(2) The procedure before the arbitration or another organ for out-of-court disputes settlement shall be applied the regulations governing these areas.

VII TRANSITIONAL AND FINAL PROVISIONS

Article 24

Transitional Provisions

The provision in paragraph 1 of Article 5 shall be applied as from the date of accession of the Republic of Macedonia to the European Union.

Article 25

Final Provisions

This law shall enter into force on the eighth day from the date of its publication in the “Official Gazette of the Republic of Macedonia”.